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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 80 (PKC)

5 ROBERT ACOSTA and  
6 JOSE DIAZ,

7 Defendants.

-----x

8 March 12, 2019  
9 9:40 a.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge  
13 and a Jury

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 BY: MICHAEL K. KROUSE

LAURIE A. KORENBAUM

17 NICHOLAS W. CHIUCHIOLO

Assistant United States Attorneys

18 GOLDSTEIN & WEINSTEIN

Attorneys for Defendant Acosta

19 BY: BARRY A. WEINSTEIN

20 -and-

KOFFSKY & FELSEN, LLC

21 BY: BRUCE D. KOFFSKY

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## APPEARANCES (Cont'd)

LAW OFFICE OF SUSAN K. MARCUS

Attorneys for Defendant

BY: SUSAN K. MARCUS

-and-

MIEDEL &amp; MYSLIWIEC, LLP

BY: FLORIAN MIEDEL

Also present: ARIELLA FETMAN, Paralegal  
DETECTIVE CARLOS VAZQUEZ, NYPD  
KATHERINE QUEZADA, Paralegal

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(In open court; trial resumed)

THE COURT: Good morning, ladies and gentlemen.

Please be seated. The government is present. Both sets of defense counsel are present and both defendants are present.

Let me turn, if I may, let me give Mr. Weinstein an opportunity to settle in.

MR. WEINSTEIN: Thank You, Judge.

All set.

THE COURT: The issue was raised quite appropriately by defense counsel that they had learned that the government had issued grand jury subpoenas after the return of the indictments in this case. I required the government to make an ex parte submission so that I could determine whether the subpoenas are, were being used for an improper purpose to develop trial evidence -- testimony or other forms of the evidence -- after the indictment which would be improper. The government has responded in a three-page letter dated March 8, 2019, ex parte and under seal in which they have explained exactly what the grand jury's ongoing investigation relates to, who it relates to, and why it remains active. They have laid out for me the identity of individuals who have been served with grand jury subpoenas. They appear to match up with the stated ongoing investigation by the grand jury; therefore, I find no improper purpose of the grand jury subpoena.

There are pending motions to suppress statements made

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1 by Defendant Diaz to Detective Vasquez and Ian and statements  
2 made by defendants to Perez and De La Cruz. Let me begin with  
3 the Confrontation Clause, which provides in all criminal  
4 prosecutions the accused shall enjoy the right to be confronted  
5 with the witnesses against him. The crux of this right is that  
6 the government cannot introduce at trial statements containing  
7 accusations against a defendant unless the accuser takes the  
8 stand against the defendant and is available for  
9 cross-examination. Statements that fall within the ambit of  
10 the Confrontation Clause have been admitted only where the  
11 declarant is unavailable and only where the defendant had a  
12 prior opportunity to cross-examine.

13 Confrontation Clause targets only testimony that  
14 contains accusations against the defendant. To implicate  
15 defendant's confrontation rights, the statement need not have  
16 accused the defendant explicitly but may contain an accusation  
17 that is only implicit. Here, I conclude that the statements  
18 made by Diaz about "The Boss" are accusatory on their face and  
19 certainly implicitly accusatory. So that element is satisfied.

20 To implicate the Confrontation Clause, the statement  
21 must be used to prove the truth of the matter asserted and the  
22 statement must be testimonial. Here, the statements that the  
23 government proffers are intended to be used to prove the truth  
24 of the matter asserted not for the fact that they were said but  
25 for their truth. So that requirement is satisfied.

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1           The key question here is whether the statement is  
2     testimonial. Now, testimonial statements are statements that  
3     were made under circumstances which would lead an objective  
4     witness reasonably to believe that the statement would be  
5     available for use at later trial, and that comes right out of a  
6     *Crawford*. So it is leading an objective witness reasonably to  
7     believe that the statement would be available for use at later  
8     trial. That's the inquiry that I am required to make with  
9     regard to the statements allegedly made by Defendant Diaz to  
10    Detective Vasquez and Ian.

11           Now, the Supreme Court has not provided a  
12    comprehensive definition of the term "testimonial" explaining  
13    that only that it applies at a minimum to prior testimony at a  
14    preliminary hearing, before a grand jury, or at a former trial  
15    and to police interrogations. We know that volunteered  
16    testimony can be testimony and subject to the requirements of  
17    the Confrontation Clause. Statements made in the absence of  
18    interrogation are not necessarily non-testimonial. In other  
19    words, the presence or absence of interrogation is not  
20    dispositive on the question of whether it is testimonial.  
21    Statements are testimonial when the primary purpose is to  
22    establish -- of the interrogation is to establish or prove past  
23    events potentially relevant to later prosecution. The relevant  
24    inquiry as I have noted is not subjective but rather looks at  
25    the purpose that reasonable participants would have had. The

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1 *Michigan v. Bryant* case from the Supreme Court refers to  
2 reasonable participant and not exclusively the witness.

3 So the question as also stated by the Supreme Court in  
4 *Ohio v. Clark* is whether in light of the circumstances viewed  
5 objectively the primary purpose of the conversation was to  
6 create an out-of-court substitute for trial testimony. Now,  
7 one example where it is not testimonial is an ongoing  
8 emergency, but that's not the only circumstance. A factor to  
9 be considered is the formality or the informality of the  
10 encounter between the victim and police, but formality is not  
11 the sole touchstone of the primary purpose inquiry. Formality  
12 makes it more likely that it is a testimonial statement and  
13 informality makes it somewhat less likely that it is a  
14 testimonial statement, but it's simply a factor to be  
15 considered.

16 Here, I am faced with the following: Mr. Diaz had  
17 been indicted by a grand jury. He was arrested while being  
18 transported to the FBI's office for processing. Officers  
19 provided Diaz information about cooperating with the  
20 government. Upon arriving at the FBI's office, Diaz received a  
21 form explaining his Miranda rights and inquiring whether he  
22 wished to waive those rights. The signature on the line on the  
23 form where an individual indicates whether he or she knows and  
24 voluntarily waives his or her Miranda rights contains the words  
25 "Decline to waive/sign." The government has advised the

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1 defense that a special agent of the FBI recalls, and this was  
2 Tomas Wayne, that Diaz may have said, "I think I want to speak  
3 with you guys, but I should probably talk to a lawyer first."

4 The defendant was transported to the Southern  
5 District's Pretrial Services. He then asked to use the rest  
6 room -- this is again while he was in the Pretrial Services  
7 Office -- and Detective Vasquez accompanied him into the rest  
8 room. While both were in the rest room, Vasquez said to Diaz,  
9 "You have a family. You need to think about your family" and  
10 Diaz replied, "That guy looks familiar. Like, from 30 years  
11 ago. But he looks heavier. I am not going down for anyone.  
12 Chucky was my man. I want to cooperate, but I don't want to be  
13 labeled a snitch."

14 Detective Vasquez escorted Diaz to a common area  
15 directly outside of the rest room at which point Diaz stated,  
16 That was the Boss Man and that effing Chucky, using the actual  
17 expletive. Diaz asked to call his wife and Diaz made the call  
18 over a speaker phone in the common area. Vasquez and other  
19 NYPD detective and FBI agent were present. On the phone Diaz  
20 said, Eff it. I want to cooperate. Diaz's wife responded,  
21 "You need to do the right thing."

22 I conclude that these statements were such that a  
23 reasonable participant would not conclude that from an  
24 objective standpoint that the statements were being made for  
25 use at a later trial. This was Mr. Diaz in an unguarded manner

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1 speaking aloud about his thought processes in deciding whether  
2 he wanted to sit down and cooperate with the government and  
3 whether he wanted to talk to the government and expressed  
4 hesitancy and reluctance to do so. The location of the  
5 conversations -- their beginning in a men's room and in the  
6 area of Pretrial Services -- the circumstances, the fact of  
7 their informality, the fact had they were volunteered  
8 statements, none of these factors alone are dispositive; but  
9 taking the totality of circumstances into account, I conclude  
10 that an objective participant would not reasonably believe that  
11 the statement would be available for use at a later trial and  
12 therefore on the evidence that I have so far, they are not  
13 excluded.

14           There remains the statements made to Perez and De La  
15 Cruz and the statements are set forth on page 2 of Document  
16 113, a letter addressed to the Court from the government dated  
17 March 6, 2019. There is not much of an issue because the law  
18 is now clear. Although, I must say years ago it was less than  
19 clear to me. Statements are "clearly non-testimonial" when  
20 made "unwittingly to a government informant" or "from one  
21 prisoner to another." That is *Davis v. Washington*, 547 U.S.  
22 813 (2006) citing *Bourjaily v. US*, 483 U.S. 171. Our circuit  
23 has held that a declarant's statement to a confidential  
24 informant whose true status is unknown to the declarant do not  
25 constitute testimony within the meaning of *Crawford*. So there



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1 is no basis under *Crawford* for the exclusion of those  
2 statements and *Crawford* and for that matter *Bruton*, which  
3 preceded *Crawford*.

4 There is still the issue with regard to the tattoo  
5 evidence. The testimony from Perez concerning -- well, I guess  
6 Perez and De La Cruz were both inmates at the MCC with Diaz and  
7 Acosta and the government expects Perez to testify that Diaz  
8 stated in sum and substance that "Acosta had better keep his  
9 mouth shut" and honor the code while patting his "Death Before  
10 Dishonor" tattoo. That testimony itself there is no  
11 discernable reason to keep it out and I am not sure that  
12 defense is seeking to keep that out.

13 Am I correct about that, Mr. Miedel?

14 MR. MIEDEL: Well, your Honor, we're seeking to keep  
15 out the tattoo evidence; but that statement in and of itself  
16 without the other tattoo evidence --

17 THE COURT: No. He tapped his arm and said he better  
18 honor the code. Are you seeking to exclude that?

19 MR. MIEDEL: That statement, no.

20 THE COURT: That is what I was asking.

21 MR. MIEDEL: Okay.

22 THE COURT: So that comes in.

23 There is also testimony from De La Cruz that Diaz told  
24 him that Acosta has tattoos, including a tattoo of a cross on  
25 the back of his neck.

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1 Is anybody seeking to exclude that?

2 MR. KOFFSKY: No, your Honor.

3 THE COURT: So there is not an issue there.

4 Finally, Diaz told De La Cruz that he knows that  
5 Acosta's nickname is Animal.

6 Is there any issue with regard to that?

7 MR. KOFFSKY: No, your Honor.

8 THE COURT: So as I understand the issue is that the  
9 government wants to offer evidence not from Perez and not from  
10 De La Cruz that Acosta has a Death Before Dishonor tattoo.

11 Is that correct? Let me hear from the government.

12 MR. KROUSE: Yes, your Honor. That's correct.

13 THE COURT: The inference the government seeks to draw  
14 from that is it demonstrates nothing on identity but  
15 demonstrates that Mr. Acosta subscribed to the code.

16 Is that correct?

17 MR. KROUSE: Yes, your Honor. To be clear the  
18 government would seek to introduce evidence as to both men's  
19 Death Before Dishonor tattoos. So the fact that Mr. Diaz --

20 THE COURT: Well, hang on a second. We have already  
21 established that. Let's move from where we are.

22 MR. KROUSE: Yes, your Honor.

23 THE COURT: The testimony concerning the statement I  
24 think Perez made, tapping on his own arm Mr. Diaz pointed to  
25 his tattoo Death Before Dishonor and said, "He better follow

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1 the code," that testimony as of now is in. So we're not  
2 talking about that. We're not talking about both anything.  
3 We're talking now about Acosta. Perez and De La Cruz are not  
4 able to testify, do not have knowledge as to whether Acosta had  
5 that tattoo.

6 You want to offer evidence from some other source, law  
7 enforcement or otherwise, that Mr. Acosta does have that tattoo  
8 as some evidence that Mr. Acosta subscribes to a code.

9 MR. KROUSE: That Mr. Diaz knew that Mr. Acosta had  
10 this tattoo so he was accurate in that statement that he should  
11 honor the code because he has a similar tattoo is the main  
12 reason to introduce it and to also corroborate Mr. Perez's  
13 testimony that Mr. Diaz would say that. So to show that it's  
14 not a statement that came from nowhere that was made up from  
15 whole cloth because in fact Mr. Acosta does have that tattoo.

16 Just on Diaz, your Honor, I know the statement is in  
17 but to just to be completely clear the government wishes to  
18 introduce a photograph of Mr. Diaz's tattoo. So two matching  
19 photographs.

20 THE COURT: I understand. I assume that is not  
21 objectionable, the photograph?

22 MR. MIEDEL: The photograph of Mr. Diaz's tattoo?

23 THE COURT: Yes.

24 MR. MIEDEL: No.

25 THE COURT: That's what I thought.

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1 Thank you. You have answered inquiry.

2 Here, it's as far as I can tell certainly not 404(b)  
3 evidence. To the extent the argument is that it goes to  
4 identity, that is weak and it seems to me that the probative  
5 value of this testimony is slight. The fact that after 20  
6 years it can be proved that Mr. Acosta has this tattoo may be  
7 some evidence that he may have had it at some earlier time, but  
8 the probative value of that is very weak and it's substantially  
9 outweighed by the danger of unfair prejudice. So the evidence  
10 of the Acosta tattoo is out on the basis tendered by the  
11 government. That is my ruling.

12 As soon as our jurors are ready, we will pick up with  
13 the voir dire process.

14 MR. MIEDEL: Your Honor, I think that the government  
15 sought so introduce not just the Death Before Dishonor tattoo  
16 but other tattoos of Mr. Acosta including the Animal tattoo and  
17 the tattoo on the back. I think the same argument applied to  
18 that.

19 THE COURT: Well, I don't agree with you. I believe,  
20 and correct me if I am wrong, that the testimony was that  
21 Mr. Diaz identified one of the tattoos, not the Death Before  
22 Dishonor and not the Animal tattoo to Mr. Perez.

23 Is that accurate?

24 MR. KROUSE: Yes, your Honor, the cross on the back of  
25 his neck.

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1 MS. MARCUS: There were two. The cross and -- I am  
2 referring to your January 30th letter. There is a man  
3 handcuffed -- kneeling man handcuffed.

4 MR. KROUSE: Your Honor, at this time it would just be  
5 the cross tattoo.

6 THE COURT: So with regard to the cross tattoo, that  
7 goes to the issue of identity. It doesn't have any of the  
8 condemned factors that I found with the slight probative value  
9 outweighed by prejudicial effect. So that comes in.

10 MR. MIEDEL: Your Honor, identity only matters if  
11 those tattoos existed back in 1997. Again, there is no  
12 evidence of that. So what is the point of this testimony to  
13 show identity that they knew each other at the MCC in 2018.

14 THE COURT: No. No. Mr. Miedel, that assumes that  
15 the only possible source of the information was the contact at  
16 the MCC. You are allowed to raise that on cross-examination,  
17 but that's not the only inference that can be drawn from it.

18 MR. KROUSE: Your Honor, as to the Animal tattoo, the  
19 government argued that the photograph of the tattoo should come  
20 in to corroborate identity because Mr. Diaz stated that he knew  
21 Mr. Acosta as Animal.

22 THE COURT: Yes. On that I put that in a different  
23 category because that again goes to identity. I have  
24 considered the question of prejudicial effect and I would say  
25 that in our society "animal" can have a bad connotation or not

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1 a bad connotation depending on circumstances. Three come to  
2 mind, and I didn't put a lot of thought into this, but one is  
3 University of Alabama football coach Bear Bryant, the famous  
4 PGA golfer Tiger Woods, and the golfer Jack Nicklaus, who is  
5 referred to as I believe the Gentle Bear. We can probably sit  
6 here all day and come up with instances where "animal" can have  
7 a good connotation or a bad connotation. We know there is the  
8 rock group The Animals. I don't think it has some undue  
9 prejudicial effect. Calling somebody an "animal" in an  
10 athletic context of a football player or rugby player is often  
11 considered a compliment. So I don't see it being substantially  
12 outweighed by the danger of unfair prejudice.

13 If someone wants me to give an instruction or give  
14 those examples or the fact that nicknames are common in our  
15 world -- I had nicknames in college as I expect people in this  
16 room did at prior times in their life -- and they don't contain  
17 a lot of meaning. So if somebody wants an instruction, I will  
18 give it. If you want to making your own arguments on why  
19 nicknames don't mean very much in terms of what the nickname  
20 is, you are welcome to do that. Here, it goes to an issue of  
21 identity and there it is relevant.

22 Anything else?

23 Mr. Krouse.

24 MR. KROUSE: Your Honor, just two issues. First, the  
25 court security and the marshals asked me to raise this with the

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1 Court. The government counsel didn't see this, but according  
2 to the marshals there was extensive communication between a  
3 member of the audience and one of the defendants, Mr. Acosta.  
4 We believe that individual who was communicating with  
5 Mr. Acosta is his ex-wife. It's not permitted in the Court to  
6 have those kinds of communications. It is not a visiting room.  
7 We would just ask that the Court admonish the defendant to  
8 cease any communications with any members of the audience  
9 during the trial and during this jury selection process.

10 Another issue was raised by the marshals as well that  
11 the person Mr. Acosta was communicating with is his ex-wife  
12 also had electronic devices in the courtroom and was seen by at  
13 least a couple witnesses who reported this to the marshals  
14 apparently communicating with Mr. Acosta and then looking like  
15 she was sending text messages from both her Apple watch and her  
16 phone. Our understanding is that this individual is a federal  
17 employee, Mr. Acosta's ex-wife, who works at 26 Fed. I am not  
18 sure in what capacity but therefore has a federal ID card and  
19 that is why she was permitted to bring the electronic devices  
20 into the courthouse building; but obviously if she is here as a  
21 spectator for the trial, she shouldn't be permitted to have  
22 those electronic devices.

23 THE COURT: Well, I am not aware. This Court treats  
24 the access, including cell phones in this court, very  
25 seriously. I am not aware of any rule that says that employees

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1 of the federal government may bring cell phones into the  
2 courthouse.

3 Now, if the U.S. Marshal Service should communicate  
4 with their colleagues, the court securities officers, and  
5 remind them of that point. Certainly we have rules for  
6 attorney pass cards. The fact that you are an attorney doesn't  
7 allow to you bring a phone into the courthouse. You have to  
8 have the court approved pass. That sounds to me like having a  
9 cell phone in violation of the rules and it is up to the CSOs  
10 and the Marshal Service to enforce that and I will alert the  
11 Marshal for this district of that circumstance.

12 What you were told by the deputy marshal was that he  
13 observed a cell phone?

14 MR. KROUSE: That witnesses informed the deputy  
15 marshal I believe that a cell phone was being used and an Apple  
16 watch, both of which would be items that would not ordinarily  
17 be permitted. The government was surprised that being a  
18 federal employee would allow an individual to come into the  
19 courthouse with electronic devices.

20 THE COURT: It doesn't. They are not. That's what I  
21 am telling you.

22 MR. KROUSE: Yes, your Honor. I don't think there is  
23 any question that based on what witnesses have seen -- again,  
24 the government counsel didn't see any of this, but that this  
25 individual did have electronic devices and I don't think that



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1 would be disputed.

2 THE COURT: Right.

3 MR. KROUSE: I don't believe she is going to be  
4 permitted to bring those electronic devices in today. Then  
5 there is a separate question of her communicating with the  
6 defendant, which is again also in the government's view  
7 improper and should not be permitted.

8 THE COURT: Mr. Acosta and Mr. Diaz, I order that you  
9 not communicate with any person who is in the gallery or  
10 spectator section of this courtroom for the duration of this  
11 trial. You are absolutely free to communicate any time you  
12 want with any member of the defense team but not with persons  
13 in the gallery spectator area.

14 Do you understands that, Mr. Diaz

15 DEFENDANT DIAZ: Yes, sir.

16 THE COURT: Do you understand that, Mr. Acosta?

17 DEFENDANT ACOSTA: Yes.

18 MR. WEINSTEIN: Your Honor --

19 THE COURT: Start over again. The court reporter did  
20 not hear you.

21 MR. WEINSTEIN: The marshal informed me yesterday what  
22 was just --

23 THE COURT: No. You started off, Mr. Weinstein, with  
24 a statement about your communication with your client on that  
25 subject. Could you begin at the beginning?

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1 MR. WEINSTEIN: I told my client about that. I  
2 learned yesterday from the marshals and he will not make any  
3 motions to anybody in the audience. I told the person with the  
4 phone that will stop also.

5 I did mention to the government and the marshals  
6 yesterday, and I noticed this myself, as the jury was leaving a  
7 Fermina Acevedo rushed the rail and started yelling at my  
8 client. I also informed the marshal and the government that  
9 she was yelling and screaming at my client's mother in the  
10 lady's room and they said they would make sure -- she is also  
11 on the witness list and should not be in the courtroom.

12 THE COURT: I want to be emphatic here. My rules are  
13 this is an open courtroom and absent some law enforcement over  
14 which I have no control, no person is prohibited from being in  
15 this courtroom by this Court. If there is an issue of witness  
16 sequestration that arises, I will address that when it arises;  
17 but this is a public trial and no member of the public is to be  
18 excluded from this courtroom during the trial absent an order  
19 from me.

20 MR. WEINSTEIN: Thank you, your Honor.

21 If there is any other action by that woman, we would  
22 ask for sequestration because she is a witness in this case.

23 THE COURT: You will keep me posted. Thank you for  
24 alerting me.

25 MR. CHIUCHIOLO: Your Honor, very briefly. I raised

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1 this at side bar yesterday and your Honor had asked me to  
2 reraise it at a later juncture. With respect to Juror No. 3,  
3 Juror No. 3 is the attorney at Bloomberg, the antitrust  
4 attorney. He was former counsel at Willkie Farr & Gallagher  
5 while I was an associate.

6 THE COURT: When were you at Willkie?

7 MR. CHIUCHIOLO: 2011 through 2017.

8 THE COURT: All right. You were a litigator  
9 presumably?

10 MR. CHIUCHIOLO: Yes, your Honor.

11 THE COURT: Did you know this gentleman?

12 MR. CHIUCHIOLO: I did some work for him. Apparently  
13 he wasn't that memorable. He did not identify or indicate that  
14 he recognized me or knew me, but I wanted the record to be  
15 clear that I do know him and I did work for him. I have had no  
16 communication with him since I left Willkie and since he left  
17 Willkie.

18 THE COURT: I propose to interview him at side bar  
19 with all counsel present as I am also going to do with Juror  
20 No. 57.

21 MR. MIEDEL: One initial matter. You mentioned  
22 witness sequestration. Witnesses who are expected to testify  
23 at trial are not supposed to be in the courtroom listening to  
24 the testimony that precedes them. We would ask for that same  
25 rule to apply here.

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1 THE COURT: Yes. That's granted. The exception to  
2 that would be the case agent who is working on the case. With  
3 that exception, no government witness who has not yet testified  
4 should be in the courtroom or may be in the courtroom during  
5 the testimony of another witness.

6 MR. KROUSE: Yes, your Honor. There will be two case  
7 agents in this case Special Agent Tomas and Detective Vasquez.

8 THE COURT: All right. Your representation is that  
9 they are assisting in the presentation of the case?

10 MR. KROUSE: Yes, your Honor.

11 THE COURT: Thank you. We're adjourned until I get  
12 word from my deputy. My law clerk will check whether our  
13 jurors are ready and I will come back out when I have my jurors  
14 in place.

15 Thank you.

16 (Whereupon, jury voir resumed)

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1 (In open court; jury present)

2 THE COURT: Is the jury acceptable to the government?

3 MR. KROUSE: Yes, your Honor.

4 THE COURT: Is the jury acceptable to the defendants?

5 MR. WEINSTEIN: Yes, your Honor.

6 MS. MARCUS: Yes, your Honor.

7 THE COURT: The clerk can administer the oath.

8 THE DEPUTY CLERK: Please stand and raise your right  
9 hand.

10 (A jury of 12 and 3 alternates was impanelled and  
11 sworn)

12 THE COURT: Please be seated. The balance may now  
13 return to the jury room with my thanks.

14 Ladies and gentlemen, the deputy will now take you  
15 into the jury room. We'll take a break and then what will  
16 happen is I have some preliminary instructions. There will be  
17 opening statements and then the first witness. So we'll get to  
18 work. And then lunch.

19 Follow Flo to the jury room.

20 THE COURT: Please stand for the jury.

21 (Jury excused)

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1 (In open court; jury not present)

2 THE COURT: Who is going to open for the government?

3 MR. CHIUCHIOLO: I am going to, your Honor.

4 THE COURT: How long do you anticipate?

5 MR. CHIUCHIOLO: 10 minutes.

6 THE COURT: Who is going to open for Acosta?

7 MR. WEINSTEIN: I am, your Honor.

8 THE COURT: How long do you anticipate?

9 MR. WEINSTEIN: Probably 10 minutes.

10 THE COURT: Who is going to open for Mr. Diaz?

11 MR. MIEDEL: I am, your Honor.

12 THE COURT: How long do you anticipate?

13 MR. MIEDEL: 15 minutes.

14 THE COURT: That's fine. We're in recess. We'll pick  
15 up in five or 10 minutes with the preliminary instructions.

16 Thank you.

17 (Recess)

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(In open court; jury not present)

THE COURT: Ladies and gentlemen, you may be seated until we get word on our jurors.

Please stand for the jury.

(In open court; jury present)

THE COURT: As soon as you come in, you, the jurors, may sit down. We stand for you.

JUROR: I little false modesty never hurt.

THE COURT: Ladies and gentlemen, you may be seated. As you will find, you will get getting in and out of the jury box down to a science, to a waltz. You will see there is a second entrance on this side if that makes it easier for any of you.

Ladies and gentlemen, as you heard during the jury selection process, my job is to instruct you as to the law that governs or controls the case. I will give you those instructions at the end of the trial. In fact, I am going to speak them and I will give them to you in writing. So you will have them at the end of the case and during your deliberations. You will also have a verdict sheet. There are a few instructions that I wish to give you at the outset of the case.

This is a criminal case. An indictment was filed by a grand jury sitting in this district and an indictment is not evidence. It is simply the charges that the government is required to prove to the satisfaction of the jury by proof

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1 beyond a reasonable doubt. The indictment contains six counts  
2 or charges. Count One and Two charge the defendants, Robert  
3 Acosta and Jose Diaz, with participating in the intentional  
4 killings of Alex Ventura and Aneudis Almonte on December 22nd,  
5 1997, while engaged in a conspiracy to distribute cocaine.  
6 Count Three charges the defendants with conspiring to commit  
7 murder-for-hire, specifically the 1997 murders of Alex Ventura  
8 and Aneudis Almonte. Count Four and Five charges the  
9 defendants with committing and aiding and abetting the  
10 commission of the substantive crime of murder-for-hire in  
11 connection with the 1997 murders of Alex Ventura and Aneudis  
12 Almonte. Count Six charges the defendants with using,  
13 carrying, and possessing a firearm during and in relation to  
14 the murder-for-hire charged in Counts Four and Five.

15 The defendants, Mr. Diaz and Mr. Acosta, deny the  
16 charges and have entered pleas of not guilty. The law presumes  
17 a defendant innocent of all charges until such time, if ever,  
18 as the government proves each element of a charge by proof  
19 beyond a reasonable doubt. The presumption of innocence  
20 remains with each defendant throughout the trial unless you are  
21 convinced of the defendant's guilt beyond a reasonable doubt.

22 Until it is time to deliberate at the conclusion of  
23 the case, it is important that you keep an open mind. You must  
24 pay close attention to all of the evidence presented. Evidence  
25 consists only of the testimony of witnesses, documents, and



J3c6acol

1 other things admitted as evidence or stipulations agreed to by  
2 the attorneys.

3 Certain things are not evidence and must not be  
4 considered by you. I will list them for you now. Statements,  
5 arguments and questions by lawyers are not evidence nor are my  
6 own statements to you. So if a few moments the lawyers are  
7 going to step up to the podium and the government is going to  
8 make an opening statement because it has the burden of proof.  
9 The defendants are not required to have their lawyers make  
10 opening statements, but they have advised me that they wish to  
11 make them and they are going to make their opening statements.  
12 Those statements are not evidence. They are simply the  
13 lawyer's view of what they expect the evidence to be.

14 When I say questions are not evidence, let's say  
15 somebody asked a question: Did you have dinner with Derek  
16 Jeter at the Four Seasons restaurant on August 27, 2017? You  
17 say, Derek Jeter? Four Seasons restaurant? August 27? There  
18 must be something here. That question is evidence of nothing.  
19 It's the witness's answer to the question that makes it  
20 evidence. Just asking a question is a big nothing. It's the  
21 answer that makes it evidence.

22 Secondly, something else that isn't evidence is  
23 objections to questions. Lawyers have an obligation to their  
24 client to make an objection when they believe evidence is being  
25 offered for an improper purpose under the rules of evidence.

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1 You should not be influenced by the objection or by the Court's  
2 ruling on it. If the objection is sustained, ignore the  
3 question and any answer that may have been given. If it is  
4 overruled, treat the answer like any other. If you are  
5 instructed that some item of evidence is received for a limited  
6 purpose only, and I will tell you what that limited purpose is,  
7 you must follow that instruction. Testimony that has been  
8 excluded or stricken or I told you to disregard ceases to be  
9 evidence and must not be considered by you. So somebody may  
10 give an answer and I may say, Ladies and gentlemen, that answer  
11 is stricken. That is no longer evidence and may not be  
12 considered by you.

13 Anything you may see or hear outside the courtroom is  
14 not evidence and must be disregarded. You are to decide the  
15 case solely on the evidence presented here in the courtroom.

16 In deciding the facts of the case, you will have to  
17 decide the credibility of the witnesses. That is, how truthful  
18 and believable they are. How do you decide what to believe and  
19 whatnot to believe? Well, you are going to listen to the  
20 witnesses, observe them, and then decide as you would decide  
21 such questions in your ordinary everyday life. Did they know  
22 what they were talking about? Were they candid, honest, open  
23 and truthful? Did they have a reason to falsify, exaggerate or  
24 distort their testimony? Sometimes it is not what a witness  
25 says but how he or she says it that may give you a clue as to

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1 whether or not to accept the witness's version of an incident  
2 or an event as credible or believable. In short, the way a  
3 witness testifies may play an important part in your reaching a  
4 judgment as to whether or not you can accept the witness's  
5 testimony as reliable. You will use your common sense and good  
6 judgment to evaluate their testimony based on all the  
7 circumstances.

8 Again, keep an open mind until the trial is over. A  
9 case can be presented only step by step and witness by witness  
10 and it would be unfair to one side or the other if you were to  
11 make up your mind before you had heard all of the evidence. We  
12 know from experience that we'll hear one person give his  
13 version of events which sounds very impressive and compelling  
14 and then we hear another person's version of the same event or  
15 even the same person questioned about that event and what seems  
16 so compelling and impressive may no longer be that way. It may  
17 have been weakened completely. You'll use your common sense  
18 and good judgment to evaluate the testimony based on all the  
19 circumstances.

20 In order to assure that you decide the case only on  
21 the evidence and that you not be influenced in any way by  
22 anything that might occur outside the courtroom in your  
23 presence, I must give you a specific set of instructions.  
24 First, do not discuss the case among yourselves or with any  
25 other person. You will have the opportunity and indeed the

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1 duty to discuss the case among yourselves only after the  
2 evidence is in and the case is given to you to discuss and  
3 decide in the jury room. That means when you go back in the  
4 jury room after a witness testifies, you don't say, What did  
5 you think of that witness? Wow, that was quite something.  
6 Absolutely not. That's discussing the case. Talk about the  
7 weather. Talk about it's going to be springtime. Talk about  
8 the Yankees if you must or the Metz, which is my team, but not  
9 the case. Talking about a witness or even a lawyer, keep it to  
10 yourself for the now. In deliberations, you can talk about the  
11 evidence among yourselves.

12 Next, you are not to read anything in newspapers or  
13 elsewhere about the case or listen to any reporting on the  
14 Internet, television, radio. Not that I expect there will be  
15 any, but you are not to do that.

16 This is extremely important, that you not conduct any  
17 research about any aspect of the case on the Internet. You are  
18 not to Google or conduct any other search on any name, events,  
19 terminology, laws, legal concepts, lawyers, or any matters  
20 touching in any way upon the trial. It is a violation of your  
21 oath as a juror and a violation of this Court's order for you  
22 to seek out on your own information about any matter touching  
23 upon the trial including the people and events or to research  
24 the law. Your considerations must be based only on what you  
25 hear and observe in the courtroom. I want you to think about

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1 if your family were involved in a criminal case either because  
2 someone close to you was accused of a crime or may have been a  
3 victim of a crime. You would want jurors who followed this  
4 rule. Why? Because so often you read something and then when  
5 you hear the whole story, it turns out to be nonsense, garbage,  
6 rubbish, not reliable. There is an easy answer to it and you  
7 are depriving one side or the other of the opportunity to give  
8 their answer when you do your own research. If it is  
9 important, the parties will bring it out in the trial or the  
10 government will bring it out in the trial if they elect to do  
11 so and the defendants will have an opportunity to respond if  
12 they choose to do so or to question the evidence. That's what  
13 is fair, ladies and gentlemen, and that's what is just and that  
14 is the rule you will follow in this case.

15 The next rule is do not send or receive any electronic  
16 communications about the case. This includes texting,  
17 emailing, blogging, posting information on social media  
18 websites or using other electronic communications to discuss or  
19 even mention this case. So you don't post on your Facebook  
20 page, I was selected today to be a juror in a case. I cannot  
21 tell you anything else about it. No. You don't even post, I  
22 was selected to be a juror in a case. You don't email  
23 attorneys. You don't email each other about the case. You  
24 don't email or contact witnesses. It's blackout about this  
25 trial while this trial is going on.

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1           Now, if it becomes necessary to send the Court a note  
2 about something you saw or heard or any other matter, do not  
3 share the note with your fellow jurors. If the note describes  
4 a circumstance that might cause you to step aside as a juror,  
5 then it is not information that any other juror should know  
6 about. So it is not rude or impolite. If you saw something or  
7 you heard something, you don't come in the morning and say, You  
8 know I heard something or I saw something. Do you think I  
9 should tell the judge about this, and you explain what it is  
10 you saw and you heard. That's compounding the problem. Each  
11 of you will understand if it becomes necessary for a juror to  
12 send a note to the Court through the deputy that that is a  
13 private matter and it's in everyone's best interest that the  
14 content of the note not be shared. Nobody is being rude when  
15 they do that. So just understand that.

16           You are not allowed to speak to anyone about the case.  
17 If you are approached by someone to talk about it, politely  
18 tell them that the judge has directed you not to do so. If any  
19 person seeks to contact you about the case, and I doubt that  
20 will happen, you are required to report the incident promptly  
21 to me.

22           Also, this is a public courtroom and if it happens  
23 that somebody you know comes into the courtroom, that is fine,  
24 but send me a note right away that a friend of yours or a  
25 relative has come into the courtroom. Because it is important

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1 that matters that take place out of the presence of the jury  
2 not be shared with the jury. There is a reason for some of  
3 this. We want to follow that.

4 Now, I have instructed the attorneys and parties in  
5 this case that they are not to speak with the jurors, not even  
6 to offer a friendly greeting. So if you happen to get into an  
7 elevator and one of the defense counsel is in that elevator,  
8 they are not being rude when they totally ignore you and treat  
9 you like a stranger. They are just following my instructions  
10 to them and you are to do the same thing. They know who you  
11 are and you know who they are. But for these purposes, you are  
12 going treat them as if they were a perfect stranger and not  
13 even offer a friendly greeting. Please don't take offense at  
14 this.

15 Now, I mentioned about not discussing the case among  
16 yourselves. The other critically important part of that or  
17 with anyone else. So you don't go home at night and talk about  
18 what the case is about. You are the juror in the courtroom.  
19 You are the person hearing the evidence. The responsibility is  
20 on your shoulder, not on your cousin or your spouse or your  
21 significant other. You'll have plenty of a chance to talk to  
22 them about it when the case is over. Remember what I said  
23 about a little mystery in your life not being such a bad thing.  
24 You can tell them, I am sorry, I am under a court order. You  
25 don't want to have to come visit me in jail because I violated

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1 the court order so I cannot discuss this case.

2 Now, I am going to allow the lawyers in this case if  
3 they have to leave to take care of a matter related to the  
4 trial. Please take no offense to this. This is in compliance  
5 with my rules and may actually facilitate the trial.

6 Finally, a few words about trial procedure. The  
7 lawyers will have their opportunity to make opening statements.  
8 They are not evidence. It is a preview. After all the  
9 evidence has been received, the lawyers then have an  
10 opportunity to sum up. They may review the evidence and make  
11 arguments as to what conclusions they think you should draw  
12 from the evidence. Those arguments are not evidence either.  
13 Then you will get my instructions on the law and then you will  
14 go to the jury room to deliberate on the case.

15 Without further adieu, I am going to give the  
16 government an opportunity to deliver its opening statement.  
17 They go first and last because they are the party with the  
18 burden of proof.

19 MR. CHIUCHIOLO: Just before Christmas on a cold night  
20 more than 20 years ago two young men were ambushed in a  
21 stairwell of a Bronx apartment building. The men had been  
22 lured into that building by two young women who were paid by  
23 armed killers waiting in the stairwell of that building. One  
24 of the armed killers was that man, Jose Diaz. Jose Diaz  
25 cornered one of the victims in the stairwell and pushed him to



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1 the ground and as the victim begged for his life, Diaz pointed  
2 a gun at him and said, Bye-bye, and shot him in the head. The  
3 other armed killer was known as Chucky because his weapon of  
4 choice was a knife like in the horror film. Chucky grabbed the  
5 second victim and put him any chokehold and stabbed him in the  
6 neck, the back, and the chest again and again. Both victims  
7 were brutally murdered that night.

8 Now, this was not just some random attack in the  
9 Bronx. This was a setup. Why were both victims lured to their  
10 deaths that night? Because the victims stole money from the  
11 wrong man. The victims stole hundreds of thousands of dollars  
12 from that man, Robert Acosta, a drug boss. Acosta ran a  
13 large-scale cocaine trafficking organization in the 1990s. The  
14 two victims worked for him. But when they stole money from  
15 him, Acosta paid to have them killed. That is why we're here  
16 today, because 22 years ago in 1997 the defendants worked  
17 together to kill the victims, Alex Ventura and Aneudis Almonte.

18 Ladies and gentlemen, this opening statement is the  
19 government's opportunity to give you an overview of the case  
20 and the evidence that we expect you will see and hear. First,  
21 I will tell you what the government expects the evidence to  
22 show in this case and second I will talk about how the  
23 government intends to prove the case. That is, the types of  
24 evidence we expect you to hear and see during this case. So  
25 let's start with what the evidence will show.

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1           During the course of this trial, you are going to  
2 learn that in the 1990s, Robert Acosta ran a large-scale  
3 cocaine distribution organization in northern Manhattan. One  
4 of the Acosta's drug spots was located on 149th Street and  
5 Amsterdam in Manhattan. The murder victims worked for Acosta  
6 at that location on 149th Street. Now, Acosta also had a stash  
7 apartment located on 156th Street and Broadway in Manhattan.  
8 He used that location to store drugs and money. The stash  
9 apartment had a secret compartment or trap located under the  
10 floorboards where Acosta would keep piles of cash that his drug  
11 organization brought in every day.

12           Aside from Acosta, only one other person had a key to  
13 the stash apartment on 156th Street and Broadway, Hinton  
14 Ventura, one of Acosta's drug lieutenants. Now, Hinton's  
15 brother was one of the murder victims, Alex Ventura. A few  
16 months before the murders, Alex and his best friend Aneudis did  
17 something very foolish. They decided to steal money from that  
18 stash apartment. During the summer of 1997, Alex copied  
19 Hinton's key to the stash apartment and he went to the  
20 apartment with Aneudis, opened that secret trap and stole  
21 somewhere in the neighborhood of \$200,000. After stuffing the  
22 cash into a duffel bag, the two men ran to a car driven by  
23 Alex's girlfriend at the time.

24           Now, when news of the robbery got back to Acosta, he  
25 was livid. He immediately suspected Hinton because Hinton was

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1 the only other one with a key to the apartment, but he also  
2 suspected Aneudis because he and his friend Alex both started  
3 flashing unexplained wealth after the robberies. They started  
4 buying new clothes, new jewelry, went to clubs every night, and  
5 even bought a new car. So how did Acosta respond? He  
6 retaliated in the most direct and brutal way possible. He  
7 ordered that Hinton and Aneudis be killed.

8 Now, the intended victims worked for Acosta so he  
9 could not have them killed by someone in his own crew. He  
10 needed someone from the outside, someone with no connection to  
11 his drug organization. Acosta turned to someone named Richard  
12 Collado. Collado was an old family friend and someone who  
13 himself was involved in drug distribution at one point. Acosta  
14 asked Collado to find someone to kill Aneudis and Hinton. Now,  
15 Collado said he didn't want to be involved in a murder but that  
16 he would find someone to give the boys a beating of their  
17 lives. So to that end Collado introduced Acosta to Diaz and  
18 Acosta hired Diaz for the job. Unknown to Collado, though,  
19 Acosta and Diaz changed the plan. That beating became a  
20 killing and Diaz brought in one of his friends, Chucky, to  
21 complete the job. Two victims. Two killers.

22 Now, remember, Acosta thought that Hinton robbed him,  
23 not Alex. So on Thanksgiving night a few months after the  
24 robbery, Diaz and Chucky shot at Hinton and his girlfriend as  
25 they were driving home from a nightclub. Hinton was wounded

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1 but he lived. When Collado learned about the shooting, he  
2 confronted Diaz about it because he thought it was going to be  
3 just a beating, but Diaz told Collado to mind his own business,  
4 that The Boss, Robert Acosta, had changed the plans.

5 (Continued on next page)

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Opening - Mr. Chiuchiolo

1 MR. CHIUCHIOLO: A little more than three weeks later,  
2 just a few days before Christmas, Diaz executed that plan.

3 Now, Diaz had to find a way to lure the two men out of  
4 their neighborhood, the neighborhood where they were  
5 comfortable and they had friends. So Diaz developed a simple  
6 but ingenious plan. He found two young attractive women to  
7 lure the young men out of their neighborhood. The victims met  
8 these two women at a restaurant near the drug spot, near that  
9 149th Street drug spot.

10 The night after they met, the victims went out to a  
11 club with these two women, and then several days later the  
12 victims left that drug spot early to meet the girls at an  
13 apartment building. Before leaving, the victims picked up  
14 condoms and a bottle of liquor, and then set out for the Bronx  
15 to a building miles away from where they worked and where they  
16 lived.

17 The victims thought that they were meeting the two  
18 women in that building. But instead, waiting for them in that  
19 stairwell were Diaz and Chucky. Chucky grabbed Aneudis Almonte  
20 in a chokehold from behind, stabbing him in the chest, the  
21 back, and the neck, and the final blow through the heart. Diaz  
22 grabbed Alex Ventura, threw him to the ground, and shot him in  
23 the head from a pointblank range.

24 For these murders, these cold-blooded murders, Acosta  
25 paid Diaz \$10,000. \$10,000 for two lives. For Acosta, \$10,000

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Opening - Mr. Chiuchiolo

1 for revenge, \$10,000 to protect his lucrative drug  
2 organization.

3 Ladies and gentlemen, that's what this case is about.  
4 Two young men stole from Acosta's drug organization, Acosta  
5 hired Diaz to kill them, and Diaz and Chucky murdered Alex  
6 Ventura and Aneudis Almonte.

7 Now, how will the government prove its case?

8 First, the government will prove that Robert Acosta  
9 operated a lucrative drug business in northern Manhattan in the  
10 90s. You will hear testimony from retired NYPD detectives who  
11 arrested Acosta and others in 1994 at that 149th Street  
12 location for selling drugs. The detectives seized evidence  
13 from that spot, including large amounts of cocaine, drug  
14 paraphernalia, cash and guns.

15 You will hear of another of Acosta's drug spots, this  
16 one located on Edgecombe Avenue in Manhattan. You will learn  
17 that law enforcement seized drugs, money and guns from that  
18 location in 1994. You will even get to see some of those guns  
19 in the courtroom. And you will learn that a fingerprint lifted  
20 from the Edgecombe spot matches Robert Acosta.

21 You will also hear testimony from several people who  
22 actually worked for Acosta. They will tell you how the drug  
23 organization worked and what their roles were.

24 Then you will hear testimony about the events leading  
25 up to the murders. You will hear from a witness who helped

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Opening - Mr. Chiuchiolo

1 Alex and Aneudis, the victims, steal Acosta's money from a  
2 stash apartment. You will see a photograph of the stash  
3 apartment, and you will even get to see photographs of that  
4 trap where the money was hidden.

5 Then you will hear about the murders. You will hear  
6 from a police officer who collected evidence from the crime  
7 scene, including the bottle of liquor and the condoms that the  
8 victims brought with them that night.

9 You will hear that Almonte was stabbed multiple times  
10 and that Ventura was shot in the head.

11 You will also see evidence that connects Diaz to that  
12 apartment building in the Bronx, which explains why he chose it  
13 as the murder scene.

14 Finally, you will hear from a witness with inside  
15 knowledge of this murder for hire. Richard Collado, the man  
16 who Acosta asked to set up the murders, he is going to testify.  
17 Collado will explain to you how he knew Acosta and how Acosta  
18 asked him to find someone to murder the victims. He will  
19 explain how he introduced Diaz to Acosta, and how Diaz was  
20 asked to commit a beating, but the plans changed and it  
21 eventually became murders.

22 Mr. Collado will explain to you that after the  
23 murders, Diaz explained to him in vivid detail exactly how the  
24 murders were committed. How Diaz told him that he recruited  
25 the two women to lure the victims, that he ambushed the victims

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Opening - Mr. Chiuchiolo

1 in the stairwell, and how Alex Ventura begged for his life  
2 before Diaz shot him in the head.

3 Now, make no mistake about it, Mr. Collado has  
4 committed serious crimes in his lifetime. But he will tell you  
5 that he never intended for this to be a murder. Soon after the  
6 murders, Collado felt tremendous guilt. So what did he do? He  
7 went to the police. You will learn that in 2000, Collado  
8 identified Diaz and Chucky as the murderers, and he told law  
9 enforcement that Acosta was the one who paid for the murders.

10 Now, you will hear that Mr. Collado is testifying  
11 under what is called a grant of immunity, which means he cannot  
12 be prosecuted for the statements he makes here in court unless  
13 he lies. And you will hear that Collado came forward in this  
14 case on his own. These murders happened a long time ago. He  
15 could have stayed quiet. He could have stayed home. But he  
16 chose not to. Because he feels guilt. Because he wants to do  
17 the right thing.

18 Now, you may not agree with Collado's decision to  
19 introduce Acosta to Diaz, and you may not agree with Collado's  
20 distribution of drugs. But at the end of the day, the question  
21 is not going to be whether you agree with every decision Mr.  
22 Collado has ever made in his life. It will be whether you  
23 believe what he tells you under oath about the murders. So  
24 please listen carefully when Mr. Collado testifies. Scrutinize  
25 what he has to tell you and consider whether what he tells you



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Opening - Mr. Weinstein

1 is consistent with all the other testimony you are going to  
2 hear and see.

3 Ladies and gentlemen, over the course of this trial,  
4 you are going to hear and see a lot of different types of  
5 evidence. But at the end of the day, what happened in this  
6 case is not all that complicated. Two of Acosta's workers  
7 stole from him, so he had Diaz kill them.

8 Now, at the end of this trial, the government will  
9 have another chance to speak with you, and we will explain how  
10 the evidence you have seen establishes each of the charges  
11 against the defendants. But between now and then, I am going  
12 to ask you to do three things:

13 First, listen to the evidence;

14 Second, follow Judge Castel's instructions on the law;  
15 and

16 Third, use your common sense, the same common sense  
17 that you use in your lives every day as New Yorkers.

18 If you do those three things, the defendants will get  
19 a fair trial, the government will get a fair trial, and you  
20 will reach the only conclusion supported by the evidence.

21 The defendants are guilty.

22 THE COURT: Thank you.

23 For defendant Acosta.

24 MR. WEINSTEIN: Thank you, your Honor.

25 Good afternoon, ladies and gentlemen.

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Opening - Mr. Weinstein

1           What you heard the government representative tell you  
2           is what they would hope to, like to, wish to prove. You have  
3           heard no evidence, as his Honor told you.

4           He is right and his Honor is right. This is a case  
5           about the credibility. As the assistant just told you, it's  
6           essentially about Richard Collado. I want you to examine him,  
7           his demeanor, how his answers come out on direct as opposed to  
8           cross-examination, if there is a radical difference between the  
9           two. It is not only what someone says, because someone can say  
10          anything; it is how they say it, the manner in which they say  
11          it, how they respond when questioned by the person who is not  
12          calling them as a witness. Take into his background, his long,  
13          long history of crime. He his testifying under a grant of  
14          immunity, which means he's untouchable; he cannot be prosecuted  
15          for this murder. And you will hear -- and it will probably  
16          come out on cross-examination -- his responsibility for the  
17          murder.

18          When you're listening to the witnesses, you are going  
19          to hear different versions that they gave at different times,  
20          different versions from the 1990s to the 2000s and teens, and  
21          all of a sudden the memory gets a lot better 16, 18, 20 years  
22          later.

23          But Collado is the man driving the government's ship.  
24          Mr. Collado at one time had been a big guy in the drug  
25          business, and Hinton was my client's lieutenant. And you will

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Opening - Mr. Weinstein

1 hear evidence, I believe, that the boys, workers for Robert,  
2 were jealous of him, they wanted to be him, and Collado was the  
3 driving force behind everything.

4 You heard the government tell you that Collado, on his  
5 own, out of his good nature, came forward and said, listen, I  
6 have been having a sleepless night and I have got to tell you,  
7 a couple of years ago I was approached by Mr. Acosta to find  
8 someone who could -- and you will hear what he told back then  
9 to the police -- give someone a beating, give him a lesson,  
10 teach him a lesson.

11 You will also hear that Collado paid the money to the  
12 supposed killer. Collado is the one who gave the instructions  
13 to this person, not Mr. Acosta. Collado was the last person to  
14 speak to this person supposedly before the deed was done.  
15 Collado gave the money. But he has immunity.

16 And Collado also -- what the government didn't tell  
17 you yet -- was a confidential informant, from years before and  
18 years after. And while he was a confidential informant, you're  
19 not supposed to double deal. He never got out of the drug  
20 business. He gets a pass on all that too. He stayed in the  
21 drug business. And he and Robert Acosta were working together.  
22 And he would get the people, the customers for Robert. And the  
23 money that was taken came from a connection from Mr. Collado.

24 So when Mr. Collado wakes up with a sleepless night,  
25 well, something happened before he woke up with a sleepless

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Opening - Mr. Weinstein

1 night two years later. He had to get rid of Robert Acosta.  
2 And he has an informer and he has a handler, and he has to have  
3 a special relationship with his handler. You're not supposed  
4 to commit crimes. That means giving money to somebody and say,  
5 beat somebody and kill somebody, giving them instructions. And  
6 they are supposed to let their handlers and the other officers  
7 know that something is going down. That's what an informant  
8 does. They set up people for the government to make arrests,  
9 mostly drug cases here, but to set up people.

10 If this were a setup that Mr. Acosta was doing to have  
11 people beat up or even killed, Collado is an informant. He  
12 knocks on his handler's door. I just heard something. We have  
13 got to stop this. You people all have seen sting operations.  
14 OK. Make believe you hire somebody, there will be two  
15 government agents, boom, no one gets hurt and the bad guy gets  
16 arrested. That doesn't happen.

17 What does Collado do? How can I get Acosta? I know.  
18 I will go to my handler and tell him, I am working out a  
19 thousand kilo deal with Robert Acosta. And there are recorded  
20 conversations. And this way we will get Robert Acosta. He is  
21 out of the way. A thousand kilo deal. He's gone. And out of  
22 that deal, Collado being a paid informant, he is getting money  
23 from the government, he will get a big piece of the pie because  
24 he gets a percentage of all the drugs and money that come in.  
25 They record the conversations. Robert doesn't bite.

J3C8AC02

Opening - Mr. Weinstein

1           And the government tries to say, well, he didn't say  
2 anything two years earlier about these homicides because he was  
3 afraid of Robert. That makes no sense at all because Robert  
4 hadn't seen Collado in ten years because Collado is about 15  
5 years older than Robert. Supposedly he asked, do you have any  
6 muscle?, knowing Collado's reputation, that Collado had  
7 threatened people in the past. That doesn't work.

8           Let's come up with another idea. Supposedly Collado  
9 was holding a gun and a bulletproof vest for Robert Acosta that  
10 he gave to his brother, Collado's brother. And Collado hatches  
11 a scheme this time, with his handler, his officer. Let's tell  
12 Robert I'm arrested and you got to get the gun out of my house  
13 because the cops are going to come there and find me with a  
14 gun. You have got to do that. OK? And you have got to bail  
15 me out. What doesn't Robert do? Robert doesn't go pick up the  
16 gun. Strike two.

17           More time passed. By the way, I forgot to tell you,  
18 this guy Robert, who we tried to set up twice, he came up to me  
19 and had these people beat up or whacked or whatever.

20           This is the witness. Essentially their whole case is  
21 Mr. Collado. They are going to ask you to convict -- and this  
22 is two defendants with essentially two separate trials, and I  
23 am only talking about my client -- Mr. Acosta of these heinous,  
24 heinous crimes, based on a man who lied to everybody. He lied  
25 to the government, his informants. And does it make any sense

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Opening - Mr. Weinstein

1 that he would wait two years after trying to set him up twice?  
2 It doesn't.

3 Look at motives to lie, absolute lies. And you are  
4 going to see the witnesses that the people parade out of  
5 basically a rose gallery. Immunity agreement, cooperation  
6 agreement, cooperation agreement, criminal records. All have  
7 something to protect, especially Mr. Collado; he has the most  
8 to protect. And he got a get-out-of-jail-free card, because  
9 after he was unable to set up Robert Acosta twice, he says,  
10 OK, I have got a good one. Because there are no eyewitnesses  
11 to this. Everything flows from the mouth of Mr. Collado,  
12 everything. This fine, upstanding man, who had trouble  
13 sleeping one night, and said, hey, I have all this information.

14 The government said, and quite correctly, that their  
15 opening statement is a preview of the case they would like to  
16 prove. True. We all like to go to the movies, and my favorite  
17 time of a movie is to watch the coming attractions. You see  
18 four or five trailers and you say, this one I have really got  
19 to see, I saw a minute and a half of it, it looks great. So  
20 you take your significant other and you go to the movies. That  
21 wasn't what the trailer was about. This is the trailer, their  
22 opening statement.

23 I submit to you, when this case is over, the movie  
24 will not match the trailer. So I am asking you people to, as a  
25 the prosecutor did, use your common sense, your logic. There

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Opening - Mr. Miedel

1 is no one side favoring the other side. As his Honor said,  
2 this is an even playing field. Because a witness is a criminal  
3 or a special agent, you have to listen to him, no matter what  
4 their jobs are, and decide based on their backgrounds if they  
5 are telling the truth, if they are shading it. Look for the  
6 inconsistencies not only within one's testimony, but compared  
7 to other people. What a witness may have told the police in  
8 1997 and 1998 and now the story changes when they are  
9 interviewed the next time 15, 16 years later.

10 It's for you people. Use your common sense, your  
11 intelligence, your logic, and follow his Honor's law, to the  
12 letter of the law.

13 Thank you.

14 THE COURT: Thank you.

15 On behalf of defendant Diaz.

16 MR. MIEDEL: Good afternoon.

17 This is a murder case. There is no case more serious.  
18 And what that means is that you, the jurors, have an awesome  
19 responsibility. You have a tremendous responsibility. Because  
20 at the end of this case, when it's time to deliberate, you will  
21 have the life, the future, the freedom of a person, a fellow  
22 human being in your hands. And what we are asking you today,  
23 begging you today, is to take that responsibility as serious as  
24 you would about the most important thing in your life. Because  
25 what happens here is the most important decision that has ever

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Opening - Mr. Miedel

1     been made about Jose Diaz.

2             My name is Florian Miedel, and Susan Marcus and I have  
3     the privilege of representing Jose Diaz, who is sitting over  
4     there at counsel table.

5             There are two things I want you to know at the outset.  
6     The first is that Jose Diaz is innocent. He did not commit  
7     this murder 21 years ago. The government arrested the wrong  
8     person. By sitting here in court, he is telling you, I am  
9     innocent. He is telling you, by contesting these charges, I  
10    didn't do this. As the judge said, and will continue to say to  
11    you, Mr. Diaz is presumed innocent. But he is not just  
12    presumed innocent, ladies and gentlemen; he is innocent.

13            The second thing I want to tell you is that -- and  
14    this is crucial for you to understand -- this is not one trial,  
15    this is two trials. You must determine whether the government  
16    has offered actual proof beyond any reasonable doubt, and you  
17    must determine that for each of these two men, separately.  
18    They are separate. The evidence must be analyzed separately.

19            For example, the government is going to start, in its  
20    first day and a half of testimony, talking about an incident  
21    that happened in 1994. You need to understand that those  
22    events have nothing to do with Jose Diaz. Even the government  
23    will say so. And that's just an example.

24            Now, I have talked to you about the tremendous  
25    responsibility that you have in this case. And what do I mean?



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Opening - Mr. Miedel

1 Well, we know the government thinks Mr. Diaz is guilty. They  
2 have already told you that. But what the government believes  
3 is not the issue, is it? It's not about what the government  
4 believes. If we simply went by who the government believes is  
5 guilty, well, we wouldn't need you, right, the jury. But the  
6 founders of our country decided that the role of the jury was  
7 so important that they made the right to a jury trial one of  
8 the fundamental rights that we have. And why do you think they  
9 did that? Because someone -- you -- has to stand between the  
10 full force of the government and the single individual. And  
11 that's a jury.

12 So it's your job to determine whether the government's  
13 belief of guilt is actually based on actual real proof, proof  
14 that goes beyond any reasonable doubt, or whether it's based on  
15 conjecture or assumptions or hunches or tunnel vision. It's  
16 your job to put the government to the test. And it's your job  
17 to stand up to them if you think the evidence didn't prove  
18 guilt beyond a reasonable doubt, or the lack of evidence made  
19 you have doubts.

20 Now, you have just heard what the government believes  
21 the evidence is going to be in this case. And when I say the  
22 role of a jury is to stand between the government and the  
23 individual, to put the government to the test, to hold the  
24 government accountable, to ask questions, to be critical, to  
25 make sure the government isn't just giving you inferences, what

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Opening - Mr. Miedel

1 do I mean?

2 THE COURT: This is a preview of the evidence.

3 MR. MIEDEL: I will get to it, your Honor.

4 Let's take a closer look at what we will see in this  
5 case and what we won't see.

6 Now, you're new to the case and you're just hearing  
7 about it for the first time, so you may have missed this in the  
8 prosecutor's opening so I just want to make sure we are all on  
9 the same page here.

10 There is not a single eyewitness who will come in and  
11 say that Jose Diaz killed anyone. There will be no young woman  
12 coming in and testifying and say that she lured the victims  
13 into this building.

14 There is no physical evidence in this case linking  
15 Jose Diaz to this crime. What do I mean by that? There was  
16 DNA, but it's not his. There are no fingerprints. There is no  
17 blood evidence. There's no hairs. There's no fibers,  
18 footprints, whatever. Nothing. No objective evidence  
19 whatsoever that says that Jose Diaz committed this crime.

20 So why are we here? Well, in 2015, 18 years after the  
21 murder, a detective was assigned a 20-year-old murder that  
22 hadn't been solved. And he poured his heart and soul into  
23 trying to solve this murder. He became obsessed with solving  
24 it, even though the pieces didn't all fit. It was an old case  
25 and there was a lot of information that was missing. So he and

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Opening - Mr. Miedel

1 the prosecutors and the government began to motivate people, to  
2 incentivize people. And in the end, as you will see at this  
3 trial, every single witness against Mr. Diaz -- and there will  
4 not be many -- every single witness is motivated by something.  
5 Every single witness is employed by the government in one way  
6 or another, bought and paid for.

7 So this is a case about motivation, about  
8 incentivizing. And what am I talking about? Well, let me  
9 start with the government's central witness. You have already  
10 heard a lot about him. Richard or Ricardo Collado. The only  
11 witness you will hear from in this entire trial who claims that  
12 Jose Diaz committed this murder.

13 Now, he says he helped set up the murder. He wasn't  
14 there. He didn't see it. But he says that he put this murder  
15 into action. So what is his motivation? Well, you will hear.  
16 For one, to buy his testimony, the government has not charged  
17 him with the murder, even though he says he planned it. Not  
18 only that, they have promised him never to charge him with this  
19 murder in the future, any time. That's what immunity is.

20 MR. CHIUCHIOLO: Objection.

21 THE COURT: Overruled.

22 MR. MIEDEL: And on top of that, just to put some  
23 extra icing on the cake, ladies and gentlemen, they have also  
24 promised not to prosecute him for selling kilos of cocaine as  
25 recently as four or five years ago. Why? Well, in exchange

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Opening - Mr. Miedel

1 for something. They have promised not to prosecute him for the  
2 murder, not to prosecute him for selling kilos of cocaine, in  
3 exchange for laying the blame of this murder at Jose Diaz's  
4 feet. If that's not strong motivation, I don't know what is.

5 So the government has hitched its wagon to Richard  
6 Collado, and you will see that in this trial. But this wagon  
7 is missing a wheel. Why do I say that? Well, this is what you  
8 will learn about Richard Collado. You will learn that he has  
9 been, for much of his life, a professional informant. What do  
10 I mean by that? Well, he has committed extremely serious  
11 crimes. He has sold vast amounts of cocaine and other drugs.  
12 He has carried guns. He has threatened people. And then, to  
13 get out of the mess that he created over that time period, to  
14 avoid responsibility for what he did, he has pointed the finger  
15 at other people. He has done it to save himself, and he has  
16 done it for money. \$20,000, to be exact, he has been paid by  
17 the government. That's not nothing.

18 You will also learn that Richard Collado is a  
19 professional, if not a pathological liar. As you already  
20 heard, he worked for the DEA as an informant, while at the same  
21 time selling vast amounts of drugs without telling his DEA  
22 handlers. He lied repeatedly to them. Lying was like second  
23 nature to him, and you will learn that during the course of the  
24 trial.

25 You will learn, as you have already heard a little

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Opening - Mr. Miedel

1 bit, that he tried in 1999, a year and a half or so after the  
2 murders, he tried to set up Robert Acosta. He tried to  
3 convince his DEA handlers that Robert Acosta had been involved  
4 in a thousand kilo drug deal, which he wasn't. He tried to  
5 convince his DEA handler that Acosta was in possession of a  
6 handgun, which he wasn't.

7 And you will learn that finally, two years, literally  
8 two years after the murder, when he couldn't get the DEA to  
9 bite on the thousand kilo deal, and he couldn't get the DEA to  
10 bite on the handgun, well, then he says, oh, yeah, by the way,  
11 Acosta was also involved in setting up a murder two years ago.  
12 That's the first time anyone ever hears about it, despite  
13 numerous opportunities. He met with his DEA handler many, many  
14 times before that and never said a word. He had the gall to go  
15 to the funerals of the victims in this case and to talk to the  
16 mother of one of the victims, who he was close with, and not  
17 say a word, not a word.

18 Now, you will see now, 21 years later, he is going to  
19 come in and testify on this witness stand, and he is going to  
20 appear elderly, somewhat frail, a man who speaks softly, who  
21 doesn't raise his voice. And it may be hard for you all to  
22 jive that vision of him with the guy he was 20 years ago, the  
23 one who set up huge drug deals, who carried guns, who was a  
24 big-time criminal. Don't let the passage of time soften him.  
25 Don't let it fool you. He was engaging in kilo quantity drug

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Opening - Mr. Miedel

1 deals as recently as four years ago. He remains the same  
2 untrustworthy, unreliable, lying man he has always been. And  
3 that's the man the government has hitched its wagon to.

4 So the questions that you will have to ask yourselves,  
5 as you listen to his testimony, at the end of the trial are:  
6 Would I trust Richard Collado with the most important matter in  
7 my life? Would I trust him to watch my kids? Would I trust  
8 him to tell the truth about something significant? Would I  
9 trust him with my freedom? Because I can tell you, Jose Diaz  
10 wouldn't. But he doesn't get to make that decision. He is  
11 forced to rely on you to make that decision for him.

12 You will also see, ladies and gentlemen, that Richard  
13 Collado is not the only witness motivated or incentivized by  
14 the government, on the government's payroll, so to speak. In  
15 fact, you will learn that every witness who has something  
16 negative to say about Jose Diaz -- and again, I said there  
17 won't be many -- every witness is motivated in one way or  
18 another by the government, and I want you just to listen to the  
19 testimony of those witnesses very carefully.

20 So this is a case about motivation. It's also a case  
21 about dates. Dates matter in this case, because they make you  
22 realize, and they will make you realize, that there is  
23 something weird going on here. There is something rotten about  
24 this case. You will have to ask yourselves some questions as  
25 you listen to the testimony. For example, this murder happens

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Opening - Mr. Miedel

1 in December of 1997. As I already told you, Richard Collado  
2 waits two years to tell anyone about what he supposedly knows,  
3 and only once he is motivated by self-interest. So you should  
4 ask yourselves why. Doesn't that cast a dark shadow on his  
5 trustworthiness.

6 Then the police investigate. Collado picks out photos  
7 of Diaz and Chucky as the supposed killers and Robert Acosta  
8 who supposedly hired them. And you will learn that in the year  
9 2000, the police had essentially the same evidence the  
10 government has now, still based entirely on Richard Collado.  
11 Not much changed, but nobody gets arrested, nobody gets charged  
12 until 16 more years. You should ask yourselves why.

13 Another date, June 9, 2016. The police visit Jose  
14 Diaz at his home. This is 18 months before he gets arrested.  
15 They question him about the murder. He is cooperative. He is  
16 pleasant. He talks to them.

17 About a couple weeks later, June 21, 2016, the police  
18 come back. He is still there. He hasn't gone anywhere. He is  
19 not hiding. This time they ask him to provide a DNA sample.

20 MS. KORENBAUM: Objection.

21 THE COURT: Sidebar.

22 (At the sidebar)

23 THE COURT: What is the basis?

24 MS. KORENBAUM: Your Honor, we have not been noticed  
25 with any expert notice if there is going to be a DNA expert

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Opening - Mr. Miedel

1     testifying. We don't intend to put this in.

2             MR. MIEDEL: They may not bring it in. Vazquez is  
3     going to be testifying about how they went to his house, got a  
4     DNA sample, how he learned that the DNA sample didn't match.

5             THE COURT: Who learned that it didn't match?

6             MR. MIEDEL: Vazquez. If it doesn't come in through  
7     them, we may --

8             THE COURT: This is what I think is likely fair. They  
9     asked him for a DNA sample. There is no reason why that  
10    evidence can't come in.

11            MS. KORENBAUM: It's the result of the DNA test.

12            THE COURT: First of all, that did not come out.  
13    Second of all --

14            MR. CHIUCHIOLO: He said the DNA didn't match.

15            THE COURT: He said it earlier. OK.

16            MR. MIEDEL: Surely long forgotten.

17            THE COURT: At present, the present objection, it  
18    hasn't come up. Certainly it seems to me what is fair is he  
19    can establish it was asked for, and then in closing he can say  
20    you didn't hear any DNA evidence. That's fair. OK.

21            (In open court)

22            MR. MIEDEL: I am getting close to the end, ladies and  
23    gentlemen.

24            June 21, two weeks later, after the visit time they  
25    visit Jose Diaz, the police come back. He is still there. He



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Opening - Mr. Miedel

1 hasn't gone anywhere. This time they ask him to provide a DNA  
2 sample. DNA was recovered from one of the victim's clothes and  
3 they want to check it.

4 So what does this supposedly guilty Jose Diaz do? He  
5 says, Sure, go right ahead, take a sample, I have nothing to  
6 hide. And so they did. And after a few more weeks they called  
7 him, and he calls them back; still there, not hiding, not going  
8 anywhere.

9 Ladies and gentlemen, over the next couple of weeks,  
10 in addition to hearing what the prosecutors think is important,  
11 you will also hear the lack of evidence, about what there  
12 isn't. And the judge is going to instruct you at the end of  
13 this case that the lack of evidence is as important for you to  
14 consider as the evidence. And here is something to keep in  
15 mind. The government is going to come and argue to you at the  
16 end of the trial, ignore the lack of evidence, ladies and  
17 gentlemen, ignore the fact that there is no physical evidence,  
18 no forensic evidence linking Jose Diaz to this crime, ignore  
19 the fact that there is no eyewitness to this crime, ignore the  
20 fact that all we have got is people saying stuff. What we have  
21 culled together here, that is enough, and you should convict.

22 No, it is not enough. That's not how it works.  
23 Because Jose Diaz didn't do it. Why is there no physical  
24 evidence linking Jose Diaz to this crime? Because he didn't do  
25 it. Why is there no eyewitness who will testify that Jose Diaz

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1 shot this young man? Because he didn't do it. The lack, the  
2 absence of evidence, is just as important in your final  
3 decision as the evidence presented by the government.

4 I want to end on this, ladies and gentlemen. Your  
5 job, as I mentioned at the beginning, is so important. Aside  
6 from deciding to have a child, maybe how to parent it, you will  
7 never make a decision about another human being as important as  
8 this one. Doing your job also means recognizing and  
9 understanding that it is the government, the accuser, who is  
10 required to prove guilt. That's the way it is, and that's the  
11 way it should be. The accuser should be required to prove  
12 guilt. A person shouldn't have to prove their innocence.

13 THE COURT: Overview of the evidence, please.

14 MR. MIEDEL: So we are going to rely on you to take  
15 your job seriously. And we are also going to rely on you, at  
16 the end of this trial, to stand up to the government and just  
17 say, you want us to convict a man 21 years later, based on  
18 someone's say-so, on the say-so of an admitted liar, who wasn't  
19 even there, who didn't even see it, who was wrong about so many  
20 crucial things; you want us to convict a man of murder when  
21 there was no eyewitness, when there is no forensic evidence.  
22 No, we will not.

23 Thank you.

24 THE COURT: All right. Thank you very much.

25 Ladies and gentlemen, it's time for our lunch break.

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1 So you will hear this from me quite often. Please do not  
2 discuss the case among yourselves or with anyone else. Keep an  
3 open mind. You haven't heard a word of evidence yet.

4 Enjoy lunch, and I will see you back at 2:15. Please  
5 try and get here before 2:15 so you can go through security and  
6 be ready in the jury room. Thank you.

7 (Jury exits courtroom)

8 THE COURT: Have a pleasant lunch. Thank you.

9 (Luncheon recess)

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J3C6AC03

## A F T E R N O O N S E S S I O N

2:15 p.m.

THE COURT: Please remain standing and we'll bring the jury in.

MR. KROUSE: Your Honor, the government has a couple small matters.

THE COURT: We'll have to wait for the defendants.

MR. KROUSE: Yes, your Honor.

THE COURT: Yes, Mr. Krouse.

MR. KROUSE: Your Honor, we just want to put on the record the basis for the government's objections at opening. One objection was on the statement that the government has promised never to charge Mr. Collado; that is what immunity is. We don't believe that is an accurate legal statement of what immunity is. That is not what the government has promised. It is not a non-prosecution agreement. Use immunity for his testimony. So that is a misstatement of law. That was the basis for the government's objection to that statement of Mr. Miedel.

The government lodged an objection that was addressed at side bar. Mr. Miedel made a statement that the DNA did not match his client. We don't believe that that's -- or at least at the time the government had never made any expert disclosure of the intent to call a DNA witness. Mr. Miedel or defense counsel for Mr. Diaz had never made an expert disclosure to the

J3C6AC03

1 government of an intent to call a DNA witness. We believe that  
2 in light of that statement, the government may decide to call a  
3 DNA expert witness and will assess whether that is the path the  
4 government is going to take or whether a stipulation can be  
5 entered into by the parties. But that statement by Mr. Miedel  
6 during his opening was made without any basis to believe that  
7 that fact would ever come out in evidence. So that was the  
8 basis of the government's objection. That's all, your Honor.

9 Your Honor, the government also did have an objection  
10 to just put on the record to the narrative that Mr. Miedel in  
11 his opening laid out about the jury being a bulwark against  
12 this overreaching government. That is maybe a proper argument,  
13 but it wasn't appropriate in opening and the government did  
14 object to that. The objection I believe was sustained when the  
15 Court instructed Mr. Miedel to stick to the facts in the case.

16 THE COURT: All right. I am going to give Mr. Miedel  
17 an opportunity to respond and I think we should do it perhaps  
18 after court today. One that I would add to it and I don't  
19 think there is anything that is necessary to be done here, but  
20 the implication was that there is a sliding scale of beyond a  
21 reasonable doubt. That the more serious the crime, more that  
22 is required to find beyond a reasonable doubt. Less serious  
23 crime, perhaps not as much. If necessary I will give a  
24 corrective instruction on that. I thought about whether I  
25 should do that, but at the moment I will hear from everybody on

J3C6AC03

1 that. For the moment we'll bring our jury in.

2 MR. KROUSE: Thank you, your Honor.

J3C6AC03

1 (In open court; jury present)

2 THE COURT: Please be seated.

3 Good afternoon, ladies and gentlemen. We're back in  
4 action. Note, there would be no reason that you would know  
5 that so unless I told you this; but when you exit the  
6 courtroom, you will always exit into the jury room and then  
7 from the jury room out. Once you exit, I stand here until the  
8 last juror exists. You are not permitted back in the courtroom  
9 for any reason whatsoever until you are escorted back in by my  
10 deputy or another member of my staff. There is a reason why  
11 the courtroom is closed. These are matters and things that go  
12 on in the ordinary course. So it is very important that you  
13 follow that rule. If you think you are going to need something  
14 that is in the courtroom, get it right away. That's the rule  
15 on that.

16 The government may call its first witness.

17 MS. KORENBAUM: Thank you, your Honor. The government  
18 calls Michael Callahan.

19 THE DEPUTY CLERK: Raise your right hand.

20 MICHAEL CALLAHAN,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 THE DEPUTY CLERK: Please be seated. State your name  
24 and spell it for the record, please.

25 THE WITNESS: Michael Callahan, C-a-l-l-a-h-a-n.

J3C6AC03

Callahan - direct

1 THE COURT: You may inquire, Ms. Korenbaum.

2 MS. KORENBAUM: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MS. KORENBAUM:

5 Q. Good afternoon, Mr. Callahan.

6 A. Good afternoon.

7 Q. Are you currently employed?

8 A. Yes, I am.

9 Q. Where are you employed?

10 A. I am employed for a company called P.C. Richard & Son.

11 Q. What do you do for P.C. Richard & Son?

12 A. I am the director of security for P.C. Richard & Son.

13 Q. Is that for all the P.C. Richard & Sons?

14 A. Yes, ma'am.

15 Q. Did you ever work for the New York City Police Department?

16 A. Yes, I did.

17 Q. I am going to call that NYPD for brevity's sake.

18 What years did you work for the NYPD?

19 A. January 1985 through January 2005.

20 Q. What was your title upon retiring from the NYPD?

21 A. Detective third grade.

22 Q. I would like to focus you on 1994.

23 At that time what unit within NYPD were you assigned  
24 to?

25 A. I was assigned to the Manhattan north narcotics major case



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Callahan - direct

1 unit.

2 Q. In the spring of 1994 were you involved in an investigation  
3 of a drug organization located in the vicinity of 149th Street  
4 and Amsterdam Avenue in Manhattan?

5 A. Yes, I was.

6 Q. Were you working with other members of the NYPD as a team  
7 on that investigation?

8 A. Yes.

9 Q. Do you recall, Mr. Callahan, what was the initial source of  
10 information that led to the investigation?

11 A. We -- I had been contacted by a confidential informant who  
12 provided us with information about this organization.

13 Q. Can you just tell the jurors what a confidential informant  
14 is?

15 A. Confidential informant is somebody who provides criminal  
16 information to law enforcement and the information that that  
17 person provides we protect their identity and we issue them a  
18 confidential informant number. His information is -- the  
19 person's information is now sealed and kept down at police  
20 headquarters.

21 Q. Mr. Callahan, do you recall who the main target of the next  
22 spring 1994 investigation was?

23 A. Yes.

24 Q. Who was that?

25 A. Robert Acosta.

J3C6AC03

Callahan - direct

1 MS. KORENBAUM: Ms. Fetman, can you bring up on Mr.  
2 Callahan's screen only what is marked for identification as  
3 Government Exhibit 1.

4 Q. Is that up there, Mr. Callahan?

5 A. No, not yet. It still has the little hourglass.

6 THE COURT: As do I on my screen.

7 Oh, something is happening now.

8 THE DEPUTY CLERK: Not to the jury?

9 THE COURT: Not to the jury.

10 MS. KORENBAUM: Your Honor, I do have a hard copy if  
11 we want to speed things up.

12 THE WITNESS: Here we go.

13 THE COURT: It's up.

14 THE DEPUTY CLERK: Do they?

15 MS. KORENBAUM: They shouldn't.

16 BY MS. KORENBAUM:

17 Q. Mr. Callahan, do you see what has been marked for  
18 identification as Government Exhibit 1 on your screen?

19 A. Yes, ma'am.

20 Q. Do you recognize that person?

21 A. Yes.

22 Q. Who is it?

23 A. That is Robert Acosta.

24 Q. Was that the main target of the spring 1994 investigation?

25 A. Yes, ma'am.

J3C6AC03

Callahan - direct

1 MS. KORENBAUM: Government offers Exhibit 1, your  
2 Honor?

3 THE COURT: Any objection.

4 MR. MIEDEL: No objection.

5 THE COURT: Received it.

6 (Government's Exhibit 1 received in evidence)

7 MS. KORENBAUM: Can we put it up on the jurors'  
8 screens, please.

9 THE COURT: Can you see it, ladies and gentlemen?

10 JUROR: No.

11 THE COURT: Once it is received in evidence, you may  
12 publish.

13 It may be taking a moment to publish.

14 JUROR: It says, "Input signal out of range."

15 JUROR: It's all black now.

16 MS. KORENBAUM: Your Honor, I can publish the hard  
17 copy if you would like.

18 THE COURT: That's fine.

19 MS. KORENBAUM: May I hand it to Juror No. 1, your  
20 Honor?

21 THE COURT: You may.

22 MS. KORENBAUM: They can pass it around?

23 THE COURT: That's fine.

24 MS. KORENBAUM: Thank you.

25 BY MS. KORENBAUM:

J3C6AC03

Callahan - direct

1 Q. Mr. Callahan, what was your role in the investigation?

2 A. I was assigned the -- being that it was my confidential  
3 informant, I was the lead detective on the investigation.

4 Q. I want to focus you on the date of April 29th, 1994.

5 A. Yes, ma'am.

6 Q. Were you working on this investigation on that day?

7 A. Yes, I was.

8 Q. Do you remember what happened -- the details of what  
9 happened that day with respect to the investigation?

10 A. Yes.

11 Q. Before you tell us that, have you had the opportunity to  
12 review your grand jury testimony --

13 A. Yes.

14 Q. -- regarding that investigation?

15 A. Yes.

16 Q. Did that help to refresh your recollection of three events  
17 of 20-something years ago?

18 A. Yes.

19 Q. Can you tell us what you remember happening on April 29th,  
20 1994?

21 A. Okay. I recall being assigned to the observation post on  
22 the 29th and at approximately 1320 hours, 1:20 p.m., I observed  
23 a vehicle traveling northbound on Amsterdam Avenue get flagged  
24 down by Robert Nelson Acosta. The operator of the vehicle  
25 pulled over and parked on the east side of Amsterdam Avenue.

J3C6AC03

Callahan - direct

1 The driver of that vehicle, James Warren, exited the vehicle  
2 and crossed over to the west side of Amsterdam Avenue. James  
3 Warren proceeded to walk towards Robert and Nelson Acosta. As  
4 he approached, he engaged in conversation, took out United  
5 States currency and handed it to Robert Acosta. Robert Acosta  
6 then unfold the that currency, folded it back up and placed it  
7 in his pocket at which times James Warren walked back across to  
8 the east side of Amsterdam Avenue.

9 Q. Now, Mr. Callahan, you said you observed three men;  
10 correct?

11 A. Yes, ma'am.

12 Q. And can you tell us how close you were to them  
13 approximately?

14 A. I was across the street in the observation post, the second  
15 floor of -- I believe it was a church.

16 Q. Did you have a clear view of the three men at that point?

17 A. Yes, ma'am.

18 Q. At that point after you made your observations, did you  
19 communicate with anyone on the radio?

20 A. Yes, I did.

21 Q. Why did you do that?

22 A. I observed George Patrick enter the location, 500 West  
23 149th Street and then exit the location carrying a multicolored  
24 sweater with a zipper and hand that to Nelson Acosta at which  
25 time I proceeded to place the observations over the radio.

J3C6AC03

Callahan - direct

1 Q. Mr. Callahan, were you involved in obtaining and executing  
2 search warrants regarding the spring of 1994 investigation?

3 A. Yes, ma'am.

4 Q. Did you swear out a search warrant affidavit in front of a  
5 New York state judge in order to obtain those warrants?

6 A. Yes, I did.

7 Q. Do you recall what the number of search warrants were that  
8 you obtained?

9 A. I believe it was six.

10 Q. As you sit here today can you tell us all six locations  
11 that you had warrants for?

12 A. No.

13 Q. Did you do paperwork in this case?

14 A. Yes, I did.

15 Q. Did you -- you testified before that you did a search  
16 warrant affidavit?

17 A. Yes.

18 Q. Would that perhaps help you to refresh your recollection as  
19 to the places that were searched?

20 A. Yes, ma'am.

21 Q. Did you also do a police report concerning arrests that  
22 were made -- excuse me.

23 MS. KORENBAUM: I will rephrase that, your Honor.

24 Q. Did you also seize evidence during the execution of the  
25 search warrant?

J3C6AC03

Callahan - direct

1 A. Yes.

2 Q. And do you recall as you sit here today what you seized?

3 A. I seized United States currency.

4 Q. Do you recall approximately how much United States  
5 currency?

6 A. Approximately \$10,000.

7 Q. Do you remember what apartment you seized that money from?

8 A. No, I don't.

9 Q. On the -- in front of you there is 352 -- Government  
10 Exhibit 3521-03 for identification. With respect to the  
11 locations where the search warrants were executed, I would like  
12 you to take a look at that, specifically the first two pages,  
13 and then put it aside.

14 A. Okay.

15 Q. Now, this question is a little bit long so bear with me.

16 It says, Does reading the first two pages of that  
17 search warrant affidavit refresh your recollection about the  
18 specific locations for which you obtained search warrants in  
19 this investigation, or would you need to read that to the jury  
20 in order to convey that information accurately?

21 A. I would prefer to read that to the jury.

22 Q. So let me ask you a few questions first before you do that.

23 Were you involved in preparing that search warrant  
24 affidavit?

25 A. Yes, I was.

J3C6AC03

Callahan - direct

1 Q. And was this done when the information contained in the  
2 affidavit was still fresh in your mind from your investigation?

3 A. Yes.

4 Q. Can you take a look at the last page and tell us if you  
5 signed that affidavit?

6 A. Yes, I did sign it.

7 Q. Before you did so, did you review the affidavit, including  
8 the first three pages, to make sure the information contained  
9 in it was accurate?

10 A. Yes.

11 Q. Why would you do that? Why is it important that the  
12 information in the affidavit be accurate?

13 A. Well, for times like today. When you are at trial  
14 testifying, you want to make sure all the information you have  
15 is accurate.

16 Q. Especially in cases that are over 20 years old?

17 A. Yes.

18 Q. And do you believe that the information in this affidavit,  
19 the one in front of you, including the first two pages, is  
20 accurate?

21 A. Yes, ma'am.

22 MS. KORENBAUM: Your Honor, the government requests  
23 that Mr. Callahan be permitted to read from his affidavit and  
24 specifically the information concerning the locations that he  
25 was authorized to search, which information is contained on the



J3C6AC03

Callahan - direct

1 first two pages of the affidavit.

2 THE COURT: Any objection?

3 MR. MIEDEL: No objection.

4 MS. MARCUS: No objection.

5 THE COURT: Permitted.

6 Go ahead.

7 BY MS. KORENBAUM:

8 Q. So, Mr. Callahan, reading from the first two pages of your  
9 affidavit, can you tell us for what locations you obtained  
10 court authorized search warrants in the spring of 1994?

11 A. Yes, ma'am. First search warrant was No. 287 and that was  
12 for a 1990 blue Lincoln with New York license plates Victor 9  
13 Thomas 180, which would have been parked in the vicinity of 502  
14 West 149th Street.

15 The second search warrant was No. 288 and that was for  
16 Apartment 3E, a gray door on the fifth floor in this premises  
17 500 West 149th Street.

18 The third search warrant was for Apartment 2E in  
19 premise 500 West 149th Street.

20 Q. Thank you.

21 A. The fourth search warrant, No. 290, was for Apartment 3D on  
22 the fourth floor in premise 500 West 149th Street.

23 The fifth search warrant was for Apartment 3A7 in  
24 premise 502 West 149th Street.

25 And the last search warrant was for Rob's Hair Plus

J3C6AC03

Callahan - direct

1 located at 1812 Amsterdam Avenue.

2 Q. Thank you, Mr. Callahan.

3 Do you recall which apartment you searched or  
4 participated in the search of?

5 A. No, I don't.

6 Q. Did you do a property voucher in this case?

7 A. Yes, I did.

8 Q. Might that voucher help you to recollect which apartment  
9 you searched?

10 A. Yes.

11 Q. Do you have that voucher in front of you? I think it is to  
12 your side.

13 A. Yes.

14 MS. KORENBAUM: For the record that is Government  
15 Exhibit 3521-02 for identification.

16 Q. Is that voucher then filled out regarding the cash that you  
17 previously testified about?

18 A. Yes, ma'am.

19 Q. Having reviewed it, does it refresh your recollection as to  
20 which location you searched?

21 A. Yes.

22 Q. What was that?

23 A. Okay. At 500 West 149th Street I removed the United States  
24 currency from Nelson Acosta.

25 Q. Thank you.

J3C6AC03

Callahan - direct

1 MS. KORENBAUM: Your Honor, may I approach?

2 THE COURT: You may.

3 This is going to be the rule in this trial: Counsel  
4 for all witnesses have a revocable license to approach the  
5 witness with a document. As long as everyone is well behaved  
6 as I expect them to be, your license won't be revoked. You  
7 have permission to approach with a document.

8 MS. KORENBAUM: Thank you.

9 THE COURT: And then the practice is you return to the  
10 podium for the question.

11 Go ahead.

12 The same way if a document is received into evidence,  
13 you may publish it to the jury immediately.

14 MS. KORENBAUM: While Mr. Callahan is looking that the  
15 document, can you bring up on his screen only what has been  
16 marked for identification as Government Exhibit 701.

17 BY MS. KORENBAUM:

18 Q. Mr. Callahan, can you tell me if it pops up on your screen.  
19 If not, we'll proceed.

20 A. It popped up on the screen.

21 Q. Excellent.

22 Do you recognize that location?

23 A. Yes.

24 Q. What is it?

25 A. I believe that's the entrance to 500 West 149th Street.

J3C6AC03

Callahan - direct

1 Q. And is that the building in which the apartment that you  
2 searched was located?

3 A. Yes, ma'am.

4 MS. KORENBAUM: The government offers 701.

5 THE COURT: Any objection?

6 MS. MARCUS: No objection.

7 MR. MIEDEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 701 received in evidence)

10 MS. KORENBAUM: Thank you.

11 We can publish that to the jury.

12 Ms. Fetman, can you bring up on Mr. Callahan's screen  
13 only what has been marked for identification as Government  
14 Exhibit 800.

15 BY MS. KORENBAUM:

16 Q. Do you have that, Mr. Callahan?

17 A. Yes, ma'am.

18 Q. Do you recognize this photograph?

19 A. Yes.

20 Q. How do you recognize it?

21 A. Well, that's a member of my major case team.

22 Q. The members of your major case team?

23 A. Yes, ma'am.

24 Q. And have you seen the photograph before?

25 A. Yes.

J3C6AC03

Callahan - direct

1 Q. Where was it taken?

2 A. This was taken back at our office.

3 Q. When was it taken?

4 A. Oh, this was taken after the night -- during the night of  
5 May the 4th, 1994.

6 Q. That's the date that the search warrants were executed?

7 A. Yes, ma'am.

8 MS. KORENBAUM: The government offers Government  
9 Exhibit 800.

10 THE COURT: Any objection?

11 MS. MARCUS: No objection.

12 MR. MIEDEL: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 800 received in evidence)

15 BY MS. KORENBAUM:

16 Q. Mr. Callahan, are you in that photograph?

17 A. Yes, ma'am.

18 Q. Can you tell us where you are seated or located in the  
19 photograph?

20 A. Okay. I am kneeling down in the first row. I am the third  
21 person from the left.

22 Q. What color shirt are you wearing?

23 A. It's a gray Notre Dame sweatshirt. It is gray and it has  
24 the letters ND on it. You cannot see it because of the  
25 property, but that is what I was wearing.

J3C6AC03

Callahan - cross - Koffsky

1 Q. Mr. Callahan, those are other members of your team in the  
2 photograph?

3 A. Yes, ma'am.

4 Q. And what is on the table in front of you in that  
5 photograph?

6 A. That's all the property that was seized during the  
7 execution of the search warrants.

8 Q. Can you describe some of that property while you look at  
9 it?

10 A. Yes. We have the United States currency, which is on the  
11 front edge of the table. We have some of the drug  
12 paraphernalia, the scales. We have the firearms to the left --  
13 back level corner of the table. We have a crossbow --  
14 hand-held crossbow, which is right behind the scales. And then  
15 you have the narcotics that were seized in the clear plastic  
16 bags in the middle of the table right behind the cash.

17 Q. Does that photographic accurately depict the items that  
18 were seized by your team that day, May 4th, 1994?

19 A. Yes, ma'am.

20 MS. KORENBAUM: Nothing further, your Honor.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. KOFFSKY:

24 Q. Good afternoon, Mr. Callahan.

25 A. Yes, sir. Good afternoon.

J3C6AC03

Callahan - cross - Koffsky

1 Q. I am looking at that picture that was just up in front of  
2 you, Government's 800.

3 You are much younger then?

4 A. Yes, ma'am.

5 Q. I see you are wearing glasses now. It's been 25 years  
6 since this incident; correct?

7 A. Yes, sir.

8 Q. Do you have documents in front of you right now?

9 A. There are documents.

10 Q. If you don't look at those documents.

11 A. There you go.

12 Q. On some of the paperwork I have with regard to what you did  
13 in 1994, there's a date of an original report. Off the top of  
14 your head, do you remember what the date of the original report  
15 is?

16 A. What report are you referring to?

17 Q. There's a complaint follow-up that you prepared. It's a  
18 two-page report that talks about some of the things that you  
19 observed. On the top of that document there's a -- it's called  
20 Date of Original Report.

21 Do you remember off the top of your head what the date  
22 of the original report was?

23 A. No.

24 Q. There's a section there that says Date Assigned.

25 Do you recall what the date of the assignment was?

J3C6AC03

Callahan - cross - Koffsky

1 A. No.

2 Q. There's a case number.

3 Do you recall what the case number was?

4 A. No.

5 Q. There's an indication that there is a complaint number.

6 Do you recall what the complaint number was?

7 A. The complaint number might have been my assigned buy-up  
8 number. When you are assigned to narcotics, you are assigned a  
9 number that stays with you in narcotics. So I would say that  
10 could have been my complaint number.

11 Q. I asked some of those questions because --

12 THE COURT: No. No.

13 MR. KOFFSKY: Withdrawn.

14 Q. Did you have an opportunity to review your reports before  
15 testifying today?

16 A. No.

17 Q. Did the government give you at any point reports to refresh  
18 your recollection with regard to your description of the events  
19 from 1994?

20 A. Just my grand jury testimony.

21 Q. So at some point the government sent you grand jury  
22 testimony with regard to your testimony in this case?

23 A. The grand jury testimony that I provided in the original  
24 grand jury is what I reviewed, correct.

25 Q. How about the photograph, did you provide that to the



J3C6AC03

Callahan - cross - Koffsky

1 government as well?

2 A. Which photograph?

3 Q. The photograph Government Exhibit 800.

4 A. Yes.

5 Q. You provided that?

6 A. Yes, sir.

7 Q. Do you still keep your notes relative to your  
8 investigations from back in these days?

9 A. No.

10 Q. So are you testifying based upon your memory from 25 years  
11 ago?

12 A. I don't understand the question. Can you reask the  
13 question?

14 Q. Sure. Let's see. You've testified -- you testified that  
15 you got information from a confidential informant.

16 Do you recall that?

17 A. Yes.

18 Q. Now, have you had an opportunity to look at your grand jury  
19 testimony leading up to today's testimony?

20 A. Yes.

21 Q. Is there anything in your grand jury testimony that talks  
22 about confidential informant?

23 A. No.

24 Q. So it's your recollection from 25 years ago that this  
25 particular investigation started with a CI?

J3C6AC03

Callahan - cross - Koffsky

1 A. Yes.

2 Q. And that is based upon your review of any records, or is  
3 that just your memory from 25 years ago?

4 A. Well, based on my recommend memory and review of some  
5 records.

6 Q. What records did you review?

7 A. The search warrant.

8 Q. Right. Anything else?

9 A. That's it.

10 Q. The search warrant that -- now, was the search warrant put  
11 in front of you?

12 A. Yes, sir.

13 Q. How many pages is that search warrant?

14 A. Do you want me to count them?

15 Q. Yes, please.

16 A. I think it is 18 of 18.

17 Q. So there is an 18-page search warrant which outlined what  
18 your investigation was 25 years ago; am I correct?

19 A. Yes, sir.

20 Q. Prior to testifying today, you had the opportunity to  
21 review your grand jury testimony and that 18-page search  
22 warrant; correct?

23 A. Correct.

24 THE COURT: Ladies and gentlemen, let's stand up and  
25 stretch.

J3C6AC03

Callahan - cross - Koffsky

1 (Pause)

2 THE COURT: Be seated.

3 BY MR. KOFFSKY:

4 Q. Mr. Callahan, back in your days as an investigator and a  
5 detective with the major Manhattan north narcotics units, I  
6 imagine you did a lot of investigations; correct?

7 A. Yes, sir.

8 Q. You did investigations, which used confidential informants  
9 which gave you street-level information; correct?

10 A. Yes.

11 Q. And you sent undercover officers out to make buys from drug  
12 dealers; correct?

13 A. Correct.

14 Q. And you sat up in observation locations and you did  
15 observation buys; correct?

16 A. Correct.

17 Q. And I would imagine -- how many years were you in the  
18 Manhattan north narcotics unit?

19 A. Well, Manhattan north narcotics or the major case unit?

20 Q. In Manhattan north narcotics?

21 A. So I got top Manhattan north narcotics I believe in 1992  
22 and I believe I transferred out in 1996.

23 Q. During that time did you make hundreds of arrests?

24 A. I would say a hundred.

25 Q. You engaged in dozens, more than -- withdrawn.

J3C6AC03

Callahan - cross - Koffsky

1           You engaged in as many search warrants?

2       A.   Possibly.

3       Q.   Would you agree with me that some of your records, your  
4       reports like the search warrant that you were given and which  
5       you reviewed, that refreshes your recollection; correct?

6       A.   Yes.

7       Q.   Would you agree with me that memories fade?

8       A.   Yes.

9       Q.   You wouldn't have known anything about this case from 25  
10      years ago unless the government had given you your search  
11      warrant; am I correct?

12      A.   No, that's not correct.

13      Q.   You recall each and every arrest with particularity which  
14      would allow you 25 years later to come in and testify in a  
15      trial in front of a jury such as this?

16      A.   Rephrase that question again or ask it again, please, so I  
17      understand.

18      Q.   May I have -- it may be a little convoluted.

19           MR. KOFFSKY: May I ask the Court to read it back,  
20      your Honor?

21           THE COURT: No. Rephrase your question.

22           MR. KOFFSKY: Okay.

23      Q.   Would it be your testimony that you could recollect all of  
24      the arrests that you made while you were in Manhattan narcotics  
25      and testify cogently to a jury such as this 25 years later?

J3C6AC03

Callahan - cross - Koffsky

1 A. Possibly not.

2 Q. Because memories can fade?

3 A. Memories can fade or depends on the circumstances around  
4 the investigation. Like when you have a nice takedown or you  
5 go over, you know, seizures and things that you know of, that  
6 sometimes jars your memory and you are ready to talk about.

7 Oh, I remember that case and you can give a synopsis o it.

8 Q. But memories can also become distorted; right?

9 A. Sometimes.

10 Q. And memories can be imperfect; correct?

11 A. I would agree to that.

12 Q. And so one of the things you learn early on in your police  
13 training at the police academy is how to keep records?

14 A. Yes, sir.

15 Q. The first thing you do when you leave the police academy is  
16 you have a memo book; right?

17 A. You have your memo book in your academy.

18 Q. Right. One of the things you learn is to put down on paper  
19 immediately what you have done, what you have seen, what you  
20 have heard so that you remember it because memories fade?

21 A. Correct.

22 Q. And particularly in law enforcement, you know that you may  
23 not wind up going to talk to a prosecutor or going to a grand  
24 jury for weeks; right?

25 A. Correct.

J3C6AC03

Callahan - cross - Ms. Marcus

1 Q. And you might not go to trial for a year or 18 months;  
2 correct?

3 A. Correct.

4 Q. And those records that you keep, that's because memories  
5 fade?

6 A. Yeah.

7 MR. KOFFSKY: Nothing further.

8 Thank you, your Honor.

9 THE COURT: Any redirect?

10 MS. KORENBAUM: No, your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: I am so sorry, Ms. Marcus. My apology.

14 CROSS-EXAMINATION

15 BY MS. MARCUS:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. So you did have a chance to review some of your records in  
19 this case?

20 A. Yes, ma'am.

21 Q. And you remember that the subject of your investigation was  
22 Robert Acosta?

23 A. Yes, ma'am.

24 Q. And you remembered some or your memory was refreshed about  
25 some other names that were in the records that you reviewed?

J3C6AC03

Callahan - cross - Ms. Marcus

1 A. Yes.

2 Q. You remembered a Nelson Acosta and a James Warren?

3 A. Correct.

4 Q. Nothing in your investigation revealed anything about Jose  
5 Diaz; is that correct?

6 A. That's correct.

7 MS. MARCUS: Thank you.

8 THE COURT: Any redirect?

9 MS. KORENBAUM: No, your Honor.

10 THE COURT: Now you may step down.

11 THE WITNESS: Thank you, your Honor.

12 (Witness excused)

13 MR. KROUSE: The government calls Santos Rivera.

14 THE DEPUTY CLERK: Step into the witness box and  
15 remain standing and raise your right hand.

16 SANTOS RIVERA,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: Please be seated. State your name  
20 and spell it for the record, please.

21 THE WITNESS: Santos Rivera. S-a-n-t-o-s.  
22 R-i-v-e-r-a.

23 THE COURT: Mr. Krouse, you may inquire.

24 MR. KROUSE: Thank you, your Honor.

25 DIRECT EXAMINATION

J3C6AC03

Rivera - direct

1 BY MR. KROUSE:

2 Q. Good afternoon, Mr. Rivera.

3 A. Good afternoon, sir.

4 Q. Are you currently employed?

5 A. No, I am not. I am retired.

6 Q. Did you at some point work for the New York City Police  
7 Department or the NYPD?

8 A. Yes, I did.

9 Q. How many years did you work for the NYPD?

10 A. I did 20 years in the NYPD.

11 Q. From approximately when to approximately when?

12 A. From May of '82 to May of 2004 -- 2002. Sorry, 2002.

13 Q. A full 20 years; correct?

14 A. 20 years, yes, sir.

15 Q. After May 2002 when you retired from the NYPD, did you do  
16 any other work after that?

17 A. Yes, I did.

18 Q. What kind of work did you do after you left the NYPD?

19 A. I did some security jobs in the hospital.

20 Q. Go ahead.

21 A. Then I was a security manager there in charge of two  
22 hospitals.

23 Q. Around when did you retire for good?

24 A. I would like to say five or six years ago.

25 Q. What was your title upon leaving the NYPD?



J3C6AC03

Rivera - direct

1 A. I retired with a title of detective.

2 Q. Now, if I could direct your attention to the spring of  
3 1994, which unit with the NYPD were you assigned to during that  
4 time period?

5 A. I was working with Manhattan north narcotic unit and it was  
6 a major case unit.

7 Q. In the Spring of 1994 were you involved in an investigation  
8 into a drug organization based in the location of 149th Street  
9 and Amsterdam Avenue in Manhattan?

10 A. Yes, I was.

11 Q. Were you with working with other members of the NYPD on  
12 that investigation?

13 A. Yes, I was.

14 Q. As a result of that investigation, did you and your team  
15 search several locations using search warrants?

16 A. Yes, we did.

17 Q. As a result of that investigation, did you and other  
18 members of your team make a number of arrests?

19 A. Yes, we did.

20 Q. Now, directing your attention to a few days before May 4th,  
21 1994, directing your attention to April 29th, 1994, were you  
22 working on that broader investigation that day?

23 A. Yes.

24 Q. Now, recognizing that this was a long time ago, do you  
25 remember some of the details about what happened that day?

J3C6AC03

Rivera - direct

1 A. Some.

2 Q. What details do you remember about that day?

3 A. I remember that I got a radio transmission from one of my  
4 team members and I responded to a location where I stopped the  
5 vehicle. And once I stopped the vehicle, I told the guy in the  
6 vehicle to exit the vehicle. And as he exited the vehicle, he  
7 had a brown paper bag in his right hand, which he dropped to  
8 the ground.

9 Q. And what, if anything, did you do with that brown paper  
10 bag; do you recall?

11 A. Yes. I vouchered the brown paper bag.

12 Q. Why did you voucher it?

13 A. Because inside the brown paper bag was two plastic bags,  
14 separate bags, with crack cocaine in it.

15 Q. Do you remember specifically where you were when you made  
16 that car stop?

17 A. 155th Street and Saint Nicholas.

18 Q. That is in Manhattan, New York?

19 A. Yes. Manhattan, New York.

20 Q. Now, at that location you mentioned that you arrested the  
21 individual who was driving the vehicle?

22 A. Yes, I did.

23 Q. At this time to you remember what that individual's name  
24 was?

25 A. No. No.

J3C6AC03

Rivera - direct

1 Q. I am going to hand you a document, Mr. Rivera. It says  
2 3532-01, page 29.

3 Mr. Rivera, if you could look down at that document,  
4 read it and when you are finished look back up.

5 Did looking at that document refresh your recollection  
6 as to the person you arrested on that day?

7 A. Yes, I do refresh my recollection.

8 Q. So if you could put the document aside.

9 What was the name of the individual you arrested that  
10 day?

11 A. Mr. James Warren.

12 Q. You mentioned when you arrested Mr. Warren, you also  
13 vouchered a bag into evidence?

14 A. Yes.

15 Q. Now, sitting here today do you recall exactly what was  
16 recovered from the bag, or would you need to look at the  
17 voucher to be certain?

18 A. I uncovered two plastic bags with crack cocaine inside the  
19 brown paper bag.

20 Q. You vouchered that crack cocaine into evidence; correct?

21 A. Yes. I put my initials on the bags -- on the bags and the  
22 brown paper bags.

23 Q. Can you tell the jury what vouchering consists of,  
24 vouchering evidence?

25 A. When you voucher evidence for that, there's a form with the

J3C6AC03

Rivera - direct

1 police department that we use for evidence. We use this form  
2 so if this ever goes to court or anything like that, it is  
3 already documented to be, you know, what was there.

4 Q. In addition to the two clear plastic bags containing crack  
5 cocaine, did you voucher anything else into evidence that day?

6 A. Yes, I did.

7 Q. Do you recall what else you vouchered into evidence?

8 A. It was a vehicle.

9 Q. Now, you mentioned how vouchering works. Was it your  
10 personal practice to be accurate in filling out NYPD property  
11 vouchers?

12 A. Yes.

13 Q. Why is that?

14 A. It is important that you write down the right things  
15 because maybe in the future this might go to trial or this  
16 might be a case. So, your know, it is important that what I  
17 bright down is what happened and what is there that I  
18 vouchered.

19 Q. Do you remember the details of the car that you vouchered  
20 sitting here today?

21 A. No, I don't remember the car.

22 Q. Would you need to read from the voucher to know for certain  
23 what those details were?

24 A. Yes, please.

25 MR. KROUSE: Ms. Fetman, if can put on the screen what

J3C6AC03

Rivera - direct

1 has been marked as 3532-01 page 39. Excuse me, 36.

2 Q. Mr. Rivera, I will also give you a hard copy because I know  
3 the screen is difficult to read from.

4 A. Thank you.

5 Q. You're welcome.

6 Did you prepare this document, Mr. Rivera?

7 A. Yes, I did.

8 Q. How do you know that you prepared it?

9 A. I have my signature on the bottom. I have my name on the  
10 top, my rank and of course the name of the defendant.

11 Q. You mentioned that it is your personal practice to be  
12 accurate in filling out these kinds of vouchers?

13 A. Yes.

14 Q. Do you believe sitting here today that you filled out that  
15 voucher accurately?

16 A. Yes.

17 MR. KOFFSKY: Your Honor, the government requests that  
18 Mr. Rivera be permitted to read from this voucher as a past  
19 recollection recorded.

20 THE COURT: Any objection?

21 MR. KOFFSKY: No objection, your Honor.

22 THE COURT: You may proceed.

23 BY MR. KOFFSKY:

24 Q. Mr. Rivera, what kind of car was seized this day?

25 A. This was a 1991 Chevy Tracker and the color red.

J3C6AC03

Rivera - direct

1 Q. Where was the car seized?

2 A. It was seized in the corner of 155th Street and Saint  
3 Nicholas Avenue in Manhattan.

4 Q. Who was the car seized from? Who did it belong to?

5 A. It belonged to Mr. James Warren.

6 Q. Was a reason given for seizing this car?

7 A. Yes.

8 Q. What was the reason?

9 A. Because we found the drugs inside of his possession in the  
10 car. That was the reason we vouchered the car.

11 Q. If I could direct you to the remarks section.

12 A. Yes.

13 Q. If you could read directly what is on the voucher.

14 A. At time place of occurrence, above listed defendant was  
15 driving said vehicle and was in possession in -- in possession  
16 of 4 ounces of alleged cocaine. Vehicle is to be held for  
17 forfeiture procedures.

18 Q. Thank you, Mr. Rivera.

19 Did you also seize a quantity of cash from Mr. Warren?

20 A. I don't remember.

21 Q. Sitting here today, do you remember seizing an item -- a  
22 quantity of cash from Mr. Warren?

23 A. Not at this time, no.

24 MR. KROUSE: Ms. Fetman, if you can put on the screen  
25 for the witness 3502-01 page 37.

J3C6AC03

Rivera - direct

1 I will approach the witness and hand him a physical  
2 copy of that document.

3 THE WITNESS: Thank you.

4 Q. Mr. Rivera, what is that document?

5 A. This is a voucher of the monies he had on him the day of  
6 the arrest.

7 Q. Did you prepare that voucher?

8 A. Yes, I did.

9 Q. How do you know?

10 A. It has my name, my signature, the defendant's name, and my  
11 name.

12 Q. Do you believe that you filled out this voucher accurately?

13 A. Yes, I do.

14 MR. KROUSE: Your Honor, the government requests that  
15 Mr. Rivera be permitted to read from this voucher as past  
16 recollection record.

17 MR. KOFFSKY: No objection, your Honor.

18 THE COURT: Proceed.

19 BY MR. KROUSE:

20 Q. Mr. Rivera, who does this voucher say the quantity of  
21 currency was seized from?

22 A. It was seized from Mr. James Warren.

23 Q. And what amount was the currency?

24 A. It was a total of \$155.

25 Q. Moving now to another topic, you testified before that a

J3C6AC03

Rivera - direct

1 number of arrests were made in the course of this  
2 investigation.

3 A. Yes.

4 Q. Were those arrests made about a week later on May 4, 1994?

5 A. Yes.

6 Q. Were those arrests on May 4th, 1994, all made in the  
7 vicinity of 149th Street and Amsterdam Avenue?

8 A. Yes, they were.

9 Q. Do you remember the names of all the people who were  
10 arrested on May 4th, 1994, as you sit here today?

11 A. No, I don't.

12 Q. At the time of the arrest, did you create paperwork to  
13 record those arrests?

14 A. Yes, I did.

15 Q. Would seeing that paperwork refresh your recollection as to  
16 who was arrested on May 4th, 1994, or would you need to read  
17 from those documents in order to accurately convey that  
18 information?

19 A. Yes, sir.

20 Q. Which is it, would it refresh your recollection or do you  
21 need to read it?

22 A. I need to read it.

23 MR. KROUSE: Your Honor, the government will approach  
24 the witness and hand him a stack of six pages.

25 For the record what the witness was just handed was



J3C6AC03

Rivera - direct

3532-01 page 2, 3532-01 page 9, 3532-01 page 14, 3532-01 page 15, 3532-01 page 21, and 3532-01 page 28.

BY MR. KROUSE:

Q. Mr. Rivera, if you can look down at those documents, flip through them and look up when you are finished.

A. Okay.

Q. Is this all paperwork that is created upon an individual's arrest?

A. Yes.

Q. Did you fill out this paperwork on May 4th, 1994?

A. Yes, I did.

Q. Did you fill out these forms accurately?

A. Yes, I did.

Q. Was it your practice to fill out these forms accurately?

A. Yes.

Q. Why is that?

A. It is important that everything you document is being used for, you know -- again for maybe for the courts or maybe forever. In this case everything has to be documented. If I give them something back, I document that I gave it to them.

MR. KROUSE: The government requests that Mr. Rivera be permitted to read from these documents as past recollection recorded.

MR. KOFFSKY: No objection, your Honor.

THE COURT: Proceed.

J3C6AC03

Rivera - direct

1 BY MR. KROUSE:

2 Q. Looking at that first form in the stack I gave you, whose  
3 arrest is recorded on that form?

4 A. This arrest was Mr. Willy Ventura.

5 Q. Looking at the second form, whose arrest is recorded in the  
6 second form?

7 A. That is Mr. Nelson Acosta.

8 Q. Looking at the third form, whose arrest is recorded on the  
9 third form?

10 A. This is Mr. George Patrick.

11 Q. Looking at the fourth form, whose arrest is recorded on  
12 this form?

13 A. This one is Mr. Robert Issacs.

14 Q. Can you spell Issacs for the record?

15 A. I-s-s-a-c-s.

16 Q. What is the arrest number listed there for Robert Issacs?

17 A. The arrest number is 39032.

18 Q. What is an arrest number?

19 A. An arrest number is what a defendant will get at the time  
20 of getting arrest and that arrest number will be used to say  
21 that this is him that got arrested and he is under that arrest  
22 number.

23 Q. All the paperwork for that particular arrest would have  
24 that same arrest number on it?

25 A. Yes.

J3C6AC03

Rivera - direct

1 Q. So is it fair to say that that is a unique identifier to a  
2 particular arrest?

3 A. Yes, it is.

4 Q. Looking at the next sheet, which is a little bit different  
5 than that sheet with Robert Issacs name on it, can you describe  
6 to the jury what this sheet is?

7 A. This form we use is a prisoner property envelope  
8 coversheet. With this form what we do is everything that we  
9 would remove from him, we write it down here and that's what he  
10 is going to get back after, you know, whatever they do in  
11 court. He will get this back. This is basically personal  
12 property.

13 Q. What is the name listed on that form in front of you?

14 A. This one is Issacs, Robert and it has another name that he  
15 went by and that is Mojica.

16 Q. So what that is the full name that is listed on that  
17 document?

18 A. It is Mr. Robert Issacs Mojico.

19 (Continued on next page)  
20  
21  
22  
23  
24  
25

J3C8AC04

Rivera - Direct

1 Q. Can you spell Mojica for the record?

2 A. M-O-J-I-C-A.

3 Q. What is the arrest number reflected on that document?

4 A. The arrest number here is 39032.

5 Q. That's the same arrest number as the prior document for  
6 Robert Isaacs, correct?

7 A. Yes.

8 Q. Is it fair to say that Robert Isaacs and Robert Isaacs  
9 Mojica are the same person?

10 A. Yes.

11 Q. What is the date of birth listed for Robert Isaacs Mojica  
12 on that form?

13 A. The date of birth is 5/26/70.

14 Q. So May 26, 1970?

15 A. Yes.

16 Q. Now, looking at the next form, whose arrest is recorded on  
17 that form?

18 A. This arrest was Mr. Aneudis Almonte.

19 Q. Can you spell Aneudis Almonte?

20 A. A-N-E-U-D-I-S.

21 Q. And the last name?

22 A. A-L-M-O-N-T-E.

23 Q. All of these individuals arrested were arrested the same  
24 day, May 4, 1994?

25 A. Yes.

J3C8ACO4

Rivera - Direct

1 Q. And from the same area, 149th Street and Amsterdam Avenue?

2 A. Yes.

3 Q. What was the listed address for Aneudis Almonte?

4 A. His listed address was 502 West 149th Street.

5 Q. Is there an apartment number?

6 A. Apartment number 4A7.

7 Q. What is Almonte's date of birth?

8 A. His date of birth is 12/9/1978.

9 Q. So December 9, 1978?

10 A. Yes.

11 MR. KROUSE: Ms. Fetman, can you put on the screen  
12 what has been marked as Government Exhibit 801.

13 Q. Do you see the document that's now on the screen?

14 A. Yes.

15 Q. Do you recognize this document?

16 A. Yes, I do.

17 Q. What is it?

18 A. These are IDs that I removed from Mr. Almonte, two IDs he  
19 had. And I also had an ID from his mother.

20 Q. Go ahead.

21 A. And what I did was I made copies of it, and of the mother,  
22 so it can be kept in the file to show that we have that, and he  
23 is going to get that back.

24 Q. Why did you make a copy of his mother's identification?

25 A. I believe that the mother is the mother and they might turn

J3C8AC04

Rivera - Direct

1 the child over to her.

2 Q. Was it because Mr. Almonte was a minor at the time?

3 A. Yes.

4 MR. KROUSE: The government offers Government Exhibit  
5 801.

6 MR. KOFFSKY: No objection.

7 THE COURT: Received.

8 (Government's Exhibit 801 received in evidence)

9 Q. Mr. Rivera, at the time of the arrests on May 4, 1994, did  
10 you also seize evidence from Robert Mojica Isaacs and Nelson  
11 Acosta?

12 A. I have to see the paperwork.

13 MR. KROUSE: Ms. Fetman, if you can put on the screen  
14 3532-01, page 7.

15 I will approach the witness and hand the witness a  
16 hard copy of this document.

17 A. Thank you.

18 Yes, I did. I vouchered these.

19 Q. Did you fill out that voucher personally?

20 A. Yes, I did.

21 Q. How do you know that?

22 A. Pardon me?

23 Q. How do you know that?

24 A. Because it has my signature, my name printed on it. It has  
25 the defendant's name on it.

J3C8AC04

Rivera - Direct

1 Q. At the time you filled out this voucher, did you do so  
2 accurately?

3 A. Yes.

4 Q. Did you do so close in time to the time when you actually  
5 seized the evidence?

6 A. Yes.

7 MR. KROUSE: The government requests that Mr. Rivera  
8 be permitted to read from this document.

9 MR. KOFFSKY: No objection.

10 THE COURT: Proceed.

11 A. Item number 1 is a white Motorola beeper. And that was  
12 taken from Mr. Robert Isaacs Mojica.

13 Q. Just to be clear, the first item seized from Robert Isaacs  
14 Mojica is what?

15 A. It's a white Motorola beeper.

16 Q. Then who was the second item seized from?

17 A. The second item was seized by Nelson Acosta.

18 Q. Seized by or seized from?

19 A. Seized from. I'm sorry.

20 Q. The second item was seized from whom?

21 A. Nelson Acosta.

22 Q. What was that second item?

23 A. That second item was a black ES communication beeper.

24 Q. Now, looking at this voucher, do you have the names of the  
25 two individuals whose property were seized listed on the

J3C8AC04

Rivera - Direct

1 voucher?

2 A. Yes.

3 Q. Directing your attention to the top of the voucher, where  
4 you list the name Robert Mojica Isaacs.

5 A. Right.

6 Q. Did you also know Mr. Mojica Isaacs under a different last  
7 name?

8 A. Yes, I did.

9 Q. What was that different last name that's recorded on this  
10 document?

11 A. That would be Acosta.

12 Q. So Robert Acosta, correct?

13 A. Yes, Robert Acosta. Yes.

14 MR. KROUSE: Ms. Fetman, can you put on the screen for  
15 everyone what has been admitted into evidence as Government  
16 Exhibit 800.

17 Q. Mr. Rivera, do you recognize this photograph?

18 A. Yes, I do.

19 Q. What is it?

20 A. This is a photograph of all the stuff that we vouchered  
21 that we seized.

22 Q. Who are the other people who are in the photograph?

23 A. Myself, I'm right here.

24 Q. Can you describe where?

25 A. I am to the right standing up, and below me is the other



J3C8AC04

Rivera - Direct

1 officer that I know.

2 Q. Do you have a certain facial expression?

3 A. Yes.

4 Q. What is your facial expression in the photo?

5 A. I'm smiling.

6 Q. In addition to these other people who are in the  
7 photograph, what is on the table?

8 A. You have some guns, you have some cash, a lot of money, you  
9 have, I believe, about four triple beam scales.

10 Q. You mentioned triple beam scales. Where in that photograph  
11 are the triple beam scales?

12 A. They are to the right.

13 Q. You say there is around four of them?

14 A. Yes.

15 Q. What is a triple beam scale?

16 A. They use that to weigh the cocaine, or whatever drugs they  
17 are going to sell; they weigh it with these triple beam scales.

18 Q. When you say "they," who do you mean?

19 A. The defendants.

20 Q. Is it fair to say that these items that are on the table in  
21 front of you and members of your team, these were items that  
22 were seized that day, May 4, 1994?

23 A. Yes.

24 Q. And seized from the apartment in the vicinity of 149th  
25 Street and Amsterdam Avenue?

J3C8ACO4

Rivera - Cross

1 A. Yes.

2 MR. KROUSE: Can I have one moment, your Honor?

3 THE COURT: You may.

4 MR. KROUSE: No further questions. Thank you.

5 THE COURT: Cross-examination.

6 MR. KOFFSKY: Just briefly, your Honor.

7 CROSS-EXAMINATION

8 BY MR. KOFFSKY:

9 Q. Good afternoon, Mr. Rivera.

10 A. Good afternoon, sir.

11 Q. I just want to follow up on one or two things that you  
12 said.

13 Based upon some questions from the government lawyer,  
14 you indicated that everything needs to be documented?

15 A. Yes.

16 Q. Do you remember saying that?

17 A. Yes.

18 Q. Then you said that it needs to be accurate and close in  
19 time?

20 A. Yes.

21 Q. Do you remember saying that?

22 A. Yes.

23 Q. Was it your practice to put down in writing as soon as you  
24 possibly could the information that you needed to record?

25 A. Within the time limit that we had, we documented it once we

J3C8AC04

Rivera - Cross

1 come in, yes.

2 Q. So before you left for the day, you needed to fill out your  
3 paperwork?

4 A. Right.

5 Q. You couldn't come back a week later?

6 A. No.

7 Q. You couldn't come back a month later?

8 A. No.

9 Q. Because your memory might not be as good a month later?

10 A. Yes.

11 Q. If you came back a year later, your memory might be  
12 horrible, am I correct?

13 A. Yes.

14 Q. You might confuse one person for another?

15 A. Confuse them, I don't know, because I don't know -- at this  
16 time, you know, it was 25 years ago.

17 Q. Would you imagine just you, your memory might be terrible a  
18 year after the fact, am I correct?

19 A. Not terrible. I won't remember certain things, but yes.

20 Q. In this case, did the government give you paperwork to look  
21 over prior to testifying?

22 A. Yes.

23 Q. What did they give you?

24 A. They gave me vouchers and the prisoner envelope forms, the  
25 vehicle voucher, the central booking sheets.

J3C8AC04

Rivera - Cross

1 Q. How long ago did they give that to you?

2 A. I would say, I got here Sunday, so Monday.

3 Q. So Monday they gave you the paperwork. Did they give you  
4 copies and you have had it to review between then and now?

5 A. Yes. We went over the paperwork, yes.

6 Q. You have had telephone conversations with the government as  
7 well?

8 A. Yes.

9 Q. At which point you have been able to go over your  
10 testimony, correct?

11 A. In the telephone conversations?

12 Q. Yes.

13 A. I believe so.

14 Q. So you have had an opportunity to sort of refresh your  
15 recollection?

16 A. Yes.

17 Q. Correct?

18 I have to imagine 25 years later, there is stuff that  
19 you just don't recall, isn't that correct?

20 A. That is correct.

21 Q. Would you say it was 10 percent or 95 percent of this case?

22 A. It was a lot because of the time factor.

23 Q. The time factor?

24 A. Being 25 years.

25 Q. Right. I have got to imagine --

J3C8AC04

Rivera - Cross

1 THE COURT: Stop imagining. Ask a question, please.

2 Q. Is your testimony really based upon the material that the  
3 government put in front of you?

4 A. Yes.

5 Q. Thank you.

6 MR. KOFFSKY: Nothing further, your Honor.

7 THE COURT: Mr. Miedel.

8 CROSS-EXAMINATION

9 BY MR. MIEDEL:

10 Q. Good afternoon, Mr. Rivera.

11 A. Good afternoon, sir.

12 MR. MIEDEL: Can we put Exhibit 800 on the screen  
13 again.

14 Q. Mr. Rivera, that's the picture of the team right after the  
15 seizures were made?

16 A. Yes.

17 Q. You pointed out that you were in this picture, correct?

18 A. Yes.

19 Q. And that you were smiling, right?

20 A. Yes.

21 Q. And you're not the only one in this picture smiling, right?

22 A. No. A few of us are, yes.

23 Q. The reason you're smiling is because you're happy to have  
24 made this arrest or this seizure, correct?

25 A. That's one reason, yeah. And we were happy that we got a

J3C8AC04

Rivera - Redirect

1 nice seizure.

2 Q. Sure. Making arrests and making seizures like that, was  
3 that one of the factors that were considered in whether people  
4 were promoted within the New York police department?

5 MR. KROUSE: Objection. Relevance.

6 THE COURT: Sustained.

7 Q. Mr. Rivera, nothing in your testimony today has anything to  
8 do with Jose Diaz, right?

9 A. Jose Diaz?

10 Q. Right.

11 A. No, I don't have nothing.

12 MR. MIEDEL: Thank you.

13 THE COURT: Any redirect?

14 MR. KROUSE: Just one, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. KROUSE:

17 Q. Mr. Rivera, Mr. Koffsky asked you a question during his  
18 cross-examination, he asked if your testimony was based on the  
19 paperwork you had in front of you. Do you remember that  
20 question?

21 A. Yes.

22 Q. In your testimony, you stated that all of the paperwork  
23 that you have in front of you is paperwork that you yourself  
24 filled out in 1994, is that accurate?

25 A. Yes, that's accurate.

J3C8AC04

Galasso - Direct

1 MR. KROUSE: No further questions, your Honor.

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: Ladies and gentlemen, let's take our  
5 mid-afternoon break. Please do not discuss the case among  
6 yourselves or with anyone. Please keep an open mind. We will  
7 be back in ten minutes. Thank you.

8 (Jury exits courtroom)

9 THE COURT: See you in ten minutes.

10 (Recess)

11 (Jury present)

12 THE COURT: Please be seated.

13 Call your next witness, please.

14 MS. KORENBAUM: Yes, your Honor. The government calls  
15 John Galasso.

16 JOHN GALASSO,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: State your name and spell it for  
20 the record, please.

21 THE WITNESS: John Galasso, G-A-L-A-S-S-O.

22 THE COURT: You may inquire.

23 DIRECT EXAMINATION

24 BY MS. KORENBAUM:

25 Q. Good afternoon, Mr. Galasso.

J3C8AC04

Galasso - Direct

1 A. Good afternoon.

2 Q. Are you currently employed?

3 A. Yes.

4 Q. Where do you work?

5 A. I work for my own company, a security company.

6 Q. Did you ever work for the New York City Police Department?

7 A. Yes, I did.

8 Q. For what years did you work for the NYPD?

9 A. July 1996 to July 2006.

10 Q. Did you retire from the NYPD at that time?

11 A. Yes, I did.

12 Q. What was your title upon retiring from the NYPD?

13 A. I was a detective sergeant.

14 Q. I would like to focus you on the spring of 1994.

15 At that time, what unit within NYPD were you assigned  
16 to?

17 A. Manhattan North Narcotics division, major case unit.

18 Q. In the spring of 1994, were you involved in an  
19 investigation of a drug organization located in the vicinity of  
20 149th Street and Amsterdam Avenue?

21 A. Yes.

22 Q. Were you working with other members of the NYPD as a team  
23 on that investigation?

24 A. Yes.

25 Q. Mr. Galasso, what was your role in that investigation?



J3C8AC04

Galasso - Direct

1 A. I executed a search warrant.

2 Q. Do you remember the address of the location where you  
3 executed that warrant?

4 A. It was 500 West 149th Street.

5 MS. KORENBAUM: Ms. Fetman, can you put up what is in  
6 evidence as Government Exhibit 701.

7 Q. Mr. Galasso, you see the screen in front of you?

8 A. Yes.

9 Q. Do you recognize what is depicted there?

10 A. It looks like the front entrance of 500 West 149th.

11 Q. Where you executed the search warrant?

12 A. Yes.

13 Q. Did your team execute one or more than one search warrant  
14 with respect to this investigation?

15 A. More than one.

16 Q. Were you involved in searching one location or more than  
17 one location?

18 A. Just one apartment.

19 Q. Do you remember if you were alone or with other law  
20 enforcement officers when you conducted this search?

21 A. I had other members of the department with me.

22 Q. Do you remember the date when the search warrants were  
23 executed?

24 A. It was May 4, 1994.

25 Q. Did you seize any property as a result of executing that

J3C8AC04

Galasso - Direct

1 search warrant?

2 A. Yes, I did.

3 Q. As you sit here today, do you remember all of the property  
4 that you seized that day?

5 A. No.

6 Q. Did you prepare any paperwork memorializing the items you  
7 seized that day?

8 A. Yes.

9 Q. Would that paperwork perhaps refresh your recollection  
10 about the property you seized that day?

11 A. Yes.

12 Q. Mr. Galasso, to your right there are three pieces of paper  
13 marked Government Exhibit 35116-03, 5 of 8; 35116-03, 6 of 8;  
14 and 35116-01, 4 of 8. Do you see those?

15 A. Yes.

16 Q. Can you take a look at them and then put them aside and  
17 tell me when you have finished reviewing them.

18 A. OK.

19 Q. First of all, Mr. Galasso, is your signature and NYPD  
20 shield number on all three of those documents?

21 A. Yes.

22 Q. I have a rather long question and I will pose it to you  
23 slowly.

24 Having read those vouchers, do they refresh your  
25 recollection regarding each and every item you seized and

J3C8AC04

Galasso - Direct

1 vouchered as a result of the search, or would you need to read  
2 from those documents in order to convey that information  
3 accurately and completely to the jury?

4 A. I would have to read from them.

5 Q. Just so that we are clear, those documents consist of two  
6 vouchers and a report that you made concerning this  
7 investigation?

8 A. Yes, it does.

9 Q. And what you have just said applies to your report as well?

10 A. Yes.

11 Q. So let me ask you a few questions first.

12 Can you tell the jury what is an evidence voucher and  
13 why you prepare them?

14 A. An evidence voucher is when the police take into custody  
15 some property, and we inventory it, we itemize it, for court  
16 purposes, for chain of custody reasons.

17 Q. How many vouchers would you estimate you prepared and  
18 filled out during your years with NYPD?

19 A. Many hundreds.

20 Q. Can you tell the jurors what a DD-5 is?

21 A. A DD-5 is a complaint follow-up. It gives you all the  
22 information on the arrest, the name of the perpetrators and  
23 some details of the arrest, the time, date, location.

24 Q. It's a police report, is that right?

25 A. Yes, a police report.

J3C8ACO4

Galasso - Direct

1 Q. How many DD-5s would you estimate you prepared during your  
2 career with the NYPD?

3 A. Hundreds.

4 Q. Did you prepare those vouchers that are in front of you and  
5 the DD-5 that is in front of you close in time to executing the  
6 search warrant you're testifying about?

7 A. Yes, I did.

8 Q. During your career with NYPD, was it important that you  
9 prepare your paperwork, including evidence vouchers and DD-5s,  
10 accurately?

11 A. Yes.

12 Q. Why is that, Mr. Galasso?

13 A. Just for reasons like today, for court testimony, I want to  
14 be as accurate as possible.

15 Q. Was it your practice to be accurate in preparing your  
16 paperwork, including evidence vouchers and DD-5s?

17 A. Yes.

18 Q. Do you believe you prepared those two vouchers and that  
19 DD-5 in front of you accurately?

20 A. Yes.

21 MS. KORENBAUM: Your Honor, the government requests  
22 that Mr. Galasso be permitted to read from his vouchers and  
23 DD-5 as his past recollection recorded.

24 MR. KOFFSKY: No objection.

25 THE COURT: Proceed.

J3C8AC04

Galasso - Direct

1 Q. Now, starting with Government Exhibit 3503, 6 of 8, which  
2 is voucher number -- tell us what voucher number that is.

3 A. That's F456405.

4 Q. Can you tell us what items are listed on the voucher?

5 A. A Ruger model 10/22 Carbine. It's a .22 LR caliber. I put  
6 a serial number E8559.

7 Q. Is that a firearm?

8 A. Yes. It's a sawed off rifle.

9 Q. And the next item?

10 A. A Ram-Line ammo clip.

11 Q. What is an ammo clip?

12 A. It's a magazine that goes into the gun, holds the  
13 ammunition.

14 Q. Was that with the Ruger?

15 A. Yes.

16 Q. What is the next item?

17 A. .22 caliber rounds, 22 of them.

18 Q. You can go on.

19 A. There was 26 .22 caliber rounds. And there was four 30  
20 carbine rounds. It looks like one -- looks like a 9 millimeter  
21 round.

22 Q. What are rounds, what do they refer to?

23 A. They are the bullets.

24 Q. So this is a voucher for a firearm and associated items?

25 A. Yes.

J3C8AC04

Galasso - Direct

1 Q. Does it indicate on this voucher the apartment number that  
2 you searched within 500 West 149th Street?

3 A. Yes, it does.

4 Q. Can you tell us what that is, please?

5 A. E2.

6 Q. Now, Mr. Galasso, to your left there is a plastic bag. Do  
7 you see it?

8 A. Yes.

9 Q. It contains three items within it. Don't hold it up yet.  
10 If you could just look at it yourself.

11 Have you reviewed these items earlier today?

12 A. Yes, I did.

13 Q. Is there a voucher number on the outside of that plastic  
14 envelope?

15 A. Yes, there is.

16 Q. Does that voucher number match one of the vouchers that you  
17 just testified about?

18 A. Yes.

19 Q. Do the items listed on that voucher -- can you tell us what  
20 voucher it is, please?

21 A. F456404.

22 Q. Can you tell us what items are listed on that voucher?

23 A. One plastic container with white powder, initial JG.

24 One orange and white plastic strainer, initial JG.

25 One manual for HK USP pistol, initial JG.

J3C8AC04

Galasso - Direct

1 Q. JG indicates yourself?

2 A. Yes, my initials.

3 Q. Now, can you look at the items within the plastic bag.

4 Do they appear to match what is on the voucher that  
5 you just read from?

6 A. The strainer does; it has my initials.

7 The pistol manual has my initials on it.

8 And the white powder also has my initials on it.

9 Q. Your initials on those items indicate that they are items  
10 that you seized?

11 A. Yes.

12 MS. KORENBAUM: The government offers Government  
13 Exhibit 802A, 802B and 803C?

14 THE COURT: Any objection?

15 MR. KOFFSKY: No objection, your Honor.

16 THE COURT: Received.

17 (Government's Exhibits 802A, 802B and 803C received in  
18 evidence)

19 Q. Now, starting with 802A, can you just hold that up so the  
20 jurors can see it, please, and describe what that is.

21 A. This is a strainer, plastic strainer.

22 Q. Now, how many narcotics cases did you work during your  
23 career with the NYPD?

24 A. Hundreds.

25 Q. That strainer, did you see an item like that during other

J3C8ACO4

Galasso - Direct

1 searches and executing other search warrants at narcotics  
2 locations?

3 A. Yes. It's very common.

4 Q. Based on your experience, what is it used for?

5 A. It's used to strain the cocaine. Sometimes cocaine may  
6 come in a little chunky form and it makes it more powder form.

7 Q. Now, moving on to Government Exhibit 802B. Tell us again  
8 what that is.

9 A. This is an operator's manual for HK USP pistol, 9  
10 millimeter.

11 Q. Can you just hold it up so the jury can have a look at it.

12 Now, going on to 802C. Can you tell us what that is?

13 A. It's a jar of 100 percent pure lactose.

14 Q. With respect to narcotics organizations, what is lactose  
15 used for in your experience?

16 A. Lactose is used as a cutting agent to mix in with the  
17 cocaine.

18 Q. Does that make the cocaine a larger quantity?

19 A. Yes. You will get two grams of cocaine, you put a gram of  
20 this, and now you got three grams and it increases the profits  
21 for the drug dealers.

22 Q. When you executed the search warrant on May 4, 1994, were  
23 there any people inside the apartment?

24 A. Yes, there were.

25 Q. Do you recall generally who was in there?



J3C8AC04

Galasso - Direct

1 A. It was about six people all together, a couple of children.

2 Q. Some adults and some children?

3 A. Yes.

4 Q. Did you arrest any of the occupants of that apartment?

5 A. Three adults.

6 Q. Do you recall the names of the persons you arrested that  
7 day?

8 A. No.

9 Q. Are those names recorded in your DD-5?

10 A. Yes, they are.

11 Q. Can you read those names from the DD-5, just the adults,  
12 not the children?

13 A. Tracy Catlett, JC Hawkins, and Darryl Goddard.

14 MS. KORENBAUM: Ms. Fetman, can you put on the screen  
15 what is in evidence as Government Exhibit 800.

16 Q. Do you see that photograph on your screen?

17 A. Yes.

18 Q. Do you recognize that photograph?

19 A. Yes.

20 Q. Have you seen it before?

21 A. Yes.

22 Q. Are you in the photograph?

23 A. Yes, I am.

24 Q. Can you sort of guide us to where you are in that  
25 photograph?

J3C8AC04

Galasso - Direct

1 A. I am in the last row standing up, second from the left.

2 Q. Is that you?

3 A. No.

4 Q. That's not the last row, I don't think.

5 A. No. That's it.

6 Q. Is that you?

7 A. Yes.

8 THE COURT: So when you say the left, facing the  
9 camera; is that what you meant?

10 THE WITNESS: That's correct.

11 THE COURT: Thank you very much.

12 Q. Do you recognize the other people in this photograph?

13 A. Yes, I do.

14 Q. Who are they, generally speaking? You don't have to name  
15 them all.

16 A. They are members of my unit that executed the warrants that  
17 day.

18 Q. Do you know when the photograph was taken?

19 A. I believe the same night, May 4, 1994.

20 Q. What is on the table there in the front part of the  
21 picture?

22 A. It's the evidence seized during the execution of the  
23 warrants.

24 Q. Can you just tell us some of the items in that photograph?

25 A. Cash, guns, drugs, and paraphernalia, drug paraphernalia.

J3C8AC04

Galasso - Cross

1 MS. KORENBAUM: One moment, your Honor.

2 Nothing further, your Honor.

3 THE COURT: Cross-examination.

4 MR. KOFFSKY: Again, just briefly, your Honor.

5 CROSS-EXAMINATION

6 BY MR. KOFFSKY:

7 Q. Mr. Galasso, you said you retired as a detective sergeant?

8 A. That's correct.

9 Q. So at first you were just a regular patrolman, correct?

10 A. Yes.

11 Q. Then you became a detective, correct?

12 A. I became a sergeant.

13 Q. First you became a sergeant?

14 A. Right.

15 Q. Then you became a detective sergeant, which meant that you  
16 were the supervising officer at a detective squad, correct?

17 A. That's correct.

18 Q. I have to imagine, as a supervising officer at a detective  
19 squad, you made sure that the detectives under you did what  
20 they were supposed to do, correct?

21 A. That's correct.

22 Q. And I think you said, in response to some of the questions  
23 to the government, you talked about some of the paperwork that  
24 you had and some of the paperwork that you created, and you  
25 said two things, that you made sure for you that they were done

J3C8AC04

Galasso - Cross

1 close in time and that they were done accurately. Am I  
2 correct, was that your testimony?

3 A. Yes. For myself personally, that's correct.

4 Q. Did you also make sure that the detectives in your squad  
5 did the same thing?

6 A. At the time of this arrest, I was a police officer. I  
7 wasn't a detective sergeant. I got promoted after this.

8 Q. But would you agree with me that your sergeant or your  
9 lieutenant or your captain would require you to make paperwork  
10 in time and accurately, correct?

11 A. That's correct.

12 Q. What is the reason for that?

13 A. Chain of custody reasons and it has to be done on time for  
14 court proceedings. You have to take the person down to central  
15 booking, talk to the ADA, all the paperwork has got to be done.

16 Q. And you knew that you might be called to a grand jury, that  
17 that might happen in a couple of days, right?

18 A. Right.

19 Q. You might be called to hearings and that might be months in  
20 advance?

21 A. Sure.

22 Q. And you might have a trial that might be a year or 18  
23 months down the road, am I correct?

24 A. That's correct.

25 Q. This was all to make sure your memory was correct when it

J3C8AC04

Galasso - Cross

1 got to you testifying a year down the road, or two years down  
2 the road, or 25 years down the road, you wanted to be able to  
3 look at a document to make sure you remembered what happened,  
4 am I correct?

5 A. That's correct.

6 Q. You wouldn't have wanted to testify a year down the road  
7 without having completed the proper paperwork, would you?

8 A. No.

9 Q. You testified that you have done hundreds of cases,  
10 correct?

11 A. That's correct.

12 Q. And filled out thousands of paperwork, thousands of  
13 documents, am I correct?

14 A. Hundreds, thousands, sure.

15 Q. Because you know that memory is faulty?

16 A. Yes.

17 Q. Memory can fade?

18 A. After 25 years, sure.

19 MR. KOFFSKY: Thank you. Nothing further, your Honor.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MS. MARCUS:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. So you mentioned some names that were involved in this

J3C8AC04

McAllister - Direct

1 investigation. Mr. Tracy Catlett?

2 A. C-A-T-L-E-T-T.

3 Q. And a Mr. Goddard?

4 A. That's correct.

5 Q. And Mr. Hawkins?

6 A. Yes.

7 Q. And nothing in your investigation related to Mr. Jose Diaz,  
8 is that correct?

9 A. I don't have him listed, no.

10 MS. MARCUS: Thank you.

11 THE COURT: Any redirect?

12 MS. KORENBAUM: Nothing, your Honor.

13 THE COURT: You may step down. Thank you.

14 (Witness excused)

15 THE COURT: Call your next witness.

16 MR. KROUSE: The government calls Patrick McAllister.

17 PATRICK McALLISTER,

18 called as a witness by the government,

19 having been duly sworn, testified as follows:

20 THE DEPUTY CLERK: State your name and spell it for  
21 the record.

22 THE WITNESS: Patrick McAllister, M-C-A-L-L-I-S-T-E-R.

23 DIRECT EXAMINATION

24 BY MR. KROUSE:

25 Q. Good afternoon, Mr. McAllister.

J3C8AC04

McAllister - Direct

1 A. Good afternoon.

2 Q. Where do you currently work?

3 A. I work for a company called K2 Intelligence.

4 Q. What is K2 Intelligence?

5 A. It's a company, we do a litany of things, private  
6 investigations, AML, which is money laundering, and we do a lot  
7 of construction integrity monitoring.

8 Q. What exactly do you do for K2 Intelligence?

9 A. I am a principal investigator for them.

10 Q. How long have you been there, approximately?

11 A. Approximately six years.

12 Q. Did you ever work for the NYPD before you worked for K2  
13 Intelligence?

14 A. Yes, I did.

15 Q. What years did you work for the NYPD?

16 A. January 1985 to 2005.

17 Q. Did you retire from the NYPD in 2005?

18 A. Yes, I did.

19 Q. What was your title upon retiring?

20 A. Detective.

21 Q. If I could direct your attention to the spring of 1994,  
22 which unit within the NYPD were you assigned to at that time?

23 A. OCCB.

24 Q. Could you tell the jury what that means?

25 A. That was the narcotics division of the NYPD.

J3C8AC04

McAllister - Direct

1 Q. What geographic area did you focus on?

2 A. Basically, we worked up in Washington Heights and up in  
3 Harlem.

4 Q. In the spring of 1994, were you involved in an  
5 investigation into a drug organization located in the vicinity  
6 of 149th Street and Amsterdam Avenue?

7 A. Yes, I was.

8 Q. Were you working with other members in the NYPD as a team  
9 on that investigation?

10 A. Yes, I was.

11 Q. What was your role in that investigation?

12 A. I was requested to execute a search warrant at a location  
13 on 149th Street.

14 Q. Did the overall team execute one or more than one search  
15 warrant on that day?

16 A. I believe there were numerous search warrants being  
17 conducted that day.

18 Q. Were you involved in just searching one location or more  
19 than one location?

20 A. Just one location.

21 Q. Do you remember if you were alone or with other law  
22 enforcement officers when you searched that one location?

23 A. I would be with more than one person.

24 Q. Do you remember the general location of where that search  
25 warrant was executed?



J3C8AC04

McAllister - Direct

1 A. West 149th Street, that's about it.

2 Q. Did you seize any property as a result of executing that  
3 search warrant?

4 A. Yes, I did.

5 Q. As you sit here today, do you remember all of the property  
6 that you seized that day?

7 A. No, I do not.

8 Q. Did you do any paperwork memorializing the events of that  
9 day and the items that you searched?

10 A. That is correct. After executing the warrant, paperwork is  
11 completed in the normal course of business, either right after  
12 or shortly thereafter the execution of the warrant.

13 Q. What kind of paperwork is filled out?

14 A. Immediately you would do vouchers, which anything you  
15 recovered and was taken from the apartment would be vouchered  
16 and put into envelopes or sealed up.

17 Q. And after doing the vouchers what other kind of paperwork  
18 would you fill out?

19 A. You would do a complaint report or a DD-5 later on.

20 Q. What kind of information would be in the complaint report  
21 or DD-5?

22 A. Property that was seized or if anybody was arrested at the  
23 time of the execution of the search warrant.

24 Q. And the location of the search warrant?

25 A. That would be correct.

J3C8AC04

McAllister - Direct

1 MR. KROUSE: I am approaching the witness and handing  
2 him a stack of documents.

3 Q. Mr. McAllister, could you look at those documents, each of  
4 them, and then look up when you're done.

5 MR. KROUSE: For the record, the government handed the  
6 witness 3525-01, 3525-02, and 3525-03.

7 Q. Without going into the substance, what are those documents?

8 A. Vouchers and a DD-5 and a complaint report.

9 Q. These are documents that were created shortly after the  
10 arrest on May 4, 1994?

11 A. That is correct.

12 Q. Is your signature and tax ID number on all of those  
13 documents?

14 A. Yes.

15 Q. What does that indicate?

16 A. That I was the one who prepared all these reports.

17 Q. Having looked at these documents, do they refresh your  
18 recollection or would you need to read from them to be exact  
19 about what exactly you seized?

20 A. No. I would definitely have to read from them.

21 MR. KROUSE: Your Honor, the government moves to allow  
22 the witness to read from these documents as a past recollection  
23 recorded.

24 MR. KOFFSKY: No objection.

25 THE COURT: Proceed.

J3C8AC04

McAllister - Direct

1 Q. If I could direct you to the first report in that stack I  
2 handed you, what is that document?

3 A. That is a DD-5.

4 Q. Which is also known as a complaint report?

5 A. The complaint report is actually 01 -- I'm sorry, 01,  
6 Exhibit 01, I guess, is the complaint report, and 02 is the  
7 DD-5.

8 Q. 3525-01 is the complaint report and 3525-02 is the DD-5?

9 A. That is correct.

10 Q. Looking at that document, what was the location that you  
11 were responsible for searching on May 4, 1994?

12 A. It would be 502 West 149th Street, apartment 3A7.

13 Q. Is the date of the search and time of the search also  
14 memorialized on this report?

15 A. Yes, it is. It's May 4, 1994, at 1:50 p.m.

16 Q. Now, does the DD-5 reflect sort of the same information as  
17 what is on 3525-01?

18 A. Partially.

19 Q. What is the additional information that the DD-5 adds?

20 A. DD-5 explains that the weapons recovered from the apartment  
21 were sent out to ballistics unit and crime scene for latent  
22 prints.

23 Q. Moving then after the DD-5 to the series of vouchers that's  
24 in that stack of documents, these vouchers were also completed  
25 by you, correct?

J3C8ACO4

McAllister - Direct

1 A. That is correct.

2 Q. Starting on 3525-03, page 6 of 6, what is the voucher  
3 number on that document?

4 A. That would be Frank 456412.

5 Q. Go to page 6 of 6, not 5 of 6.

6 A. Oh, 6 of 6. OK. The voucher number would be Frank 456411.

7 Q. When you say "Frank," it's just the letter F, correct?

8 A. That's all.

9 Q. Now, this voucher was filled out by you, correct?

10 A. That is correct.

11 Q. What does it reflect that you recovered from the apartment  
12 that you testified about earlier?

13 A. Item 1, quantity three, clear plastic bags of alleged  
14 cocaine, recovered from 502 West 149th Street.

15 Q. Is there an apartment number?

16 A. Yes, there is. 3A7.

17 Q. Now, you say quantity three. What does that mean?

18 A. Three clear plastic bags.

19 Q. Of alleged cocaine?

20 A. That is correct.

21 Q. What is item 2?

22 A. Item 2 is one clear plastic bag of alleged cocaine.

23 Q. At the bottom, does it indicate where these two items were  
24 recovered?

25 A. Yes, it does.

J3C8AC04

McAllister - Direct

1 Q. Where does it say item 1 was recovered?

2 A. Item 1 was recovered in a floor trap in the weight room of  
3 apartment 3A7. And item 2 was recovered from a wall outlet  
4 trap in the living room area of the same location.

5 Q. Now, for item 1 that was found in the floor trap, can you  
6 explain to the jury what a floor trap is?

7 A. It's a concealed area, it's usually a floor tile that is  
8 down on the ground. It could be a floor tile, it could be  
9 wooden planks, into the ground. You would never notice that it  
10 was out of the ordinary. And there is a device that you would  
11 hit to either release electrical current or a magnetic current,  
12 and this would pop up and you would be able to pop it off like  
13 a hatch.

14 Q. In your training and experience, what would be inside  
15 something like that?

16 A. It could be anything from guns, money, drugs, to drug  
17 records.

18 Q. Now, in this case, item 1, the three clear plastic bags of  
19 cocaine, those were recovered from that floor trap, correct?

20 A. That is correct.

21 Q. Item 2, you testified, was recovered from a wall outlet  
22 trap. Can you explain to the jury what a wall outlet trap is?

23 A. It was a wall outlet that was not operating; you would be  
24 able to slide it out and put whatever, like I said, jewelry,  
25 drugs, money. But it was -- looks like a wall outlet that you

J3C8AC04

McAllister - Direct

1 would plug a TV or lamp into it.

2 Q. When you pulled out that wall outlet, what was inside that  
3 wall outlet?

4 A. A clear plastic bag of alleged cocaine.

5 Q. Moving now to the same set of vouchers but page 2, 3525-03,  
6 page 2.

7 Do you have that voucher in front of you? I think  
8 it's also on your screen, Mr. McAllister, if that's easier for  
9 you.

10 A. OK. Yes.

11 Q. Is this also a voucher that you completed?

12 A. Yes, it is.

13 Q. This is for items that you seized?

14 A. That's correct.

15 Q. What is reflected in this voucher?

16 A. U.S. currency, \$6,000 worth of U.S. currency, recovered  
17 from the floor trap in the weight room of 502 West 149th  
18 Street, apartment 3A7.

19 Q. Is it fair to say that this currency was recovered from the  
20 same floor trap as the three clear plastic bags of cocaine?

21 A. That is correct.

22 Q. How much currency was recovered?

23 A. \$6,000.

24 Q. Is it broken down by different denominations in this  
25 voucher?

J3C8AC04

McAllister - Direct

1 A. Yes, it is.

2 Q. What kind of denominations are reflected?

3 A. OK. Item 1. Three \$100 bills, U.S. currency.

4 Item 2. 19 \$50 bills, U.S. currency.

5 Item 3. 200 \$20 bills, U.S. currency.

6 Item 4. 71 \$10 bills in U.S. currency.

7 Item 5. Five \$5 bills U.S. currency.

8 Item 6. 15 \$5 bills in U.S. currency.

9 Q. Moving now to the same set of vouchers 3525-03, page 3.

10 Do you have that in front of you?

11 A. I do.

12 Q. What is reflected in that voucher that you recovered?

13 A. That voucher would be F56413.

14 Item 1 was notepads and miscellaneous papers with  
15 drugs records.

16 Item 2 was one Ohaus triple beam scale.

17 Item 3 was a Motorola cell phone with a battery and  
18 adapter.

19 Item 4 was one linear trap opener.

20 Q. You testified there's four items. Where were the first two  
21 items, items 1 and 2, where were they recovered?

22 A. They were recovered in the floor trap in the weight room.

23 Q. That's the same floor trap you previously testified to,  
24 correct?

25 A. That is correct.

J3C8AC04

McAllister - Direct

1 Q. What about item 3, the Motorola cell phone, and item 4, the  
2 linear trap opener, where were those?

3 A. Item 3 was recovered in the kitchen drawer, and item 4 was  
4 recovered under the refrigerator in the kitchen.

5 Q. Now, I am going to ask you about a couple of items.

6 Item 2, you mentioned an Ohaus triple beam scale.  
7 What is that?

8 A. That's a scale -- normally during our search warrants, we  
9 would find that drug dealers would use it to weigh quantities  
10 of drugs.

11 Q. Is it fair to say you have done hundreds of search warrants  
12 and hundreds of arrests in your career?

13 A. Yes, it is.

14 Q. Is that a common item you would find?

15 A. Yes, it is very normal to find in an apartment like that.

16 Q. Item number 4 is a linear trap opener. Can you explain to  
17 the jury what that is?

18 A. It's just -- the best way to describe it is a garage door  
19 opener. You point it to the floor and it will release that  
20 trap, the trap will pop open. It could activate any trap. It  
21 could be a ceiling trap, but in this case it was a floor trap.  
22 You point it to the floor and the floor would pop up.

23 Q. This opener, is it fair to say, opened the trap that had  
24 the drugs and the money in it?

25 A. That is correct.



J3C8AC04

McAllister - Direct

1 Q. Moving now to the voucher which is marked 3525-03, page 4.

2 Do you have that document in front of you?

3 A. Yes, I do.

4 Q. What is the voucher number?

5 A. It is F456415.

6 Q. This was a voucher that you also filled out, correct?

7 A. That's correct.

8 Q. What is reflected in this voucher?

9 A. I will go through it.

10 Item 1. Two Charco .38 special revolvers.

11 Q. What is a Charco .38 special revolver?

12 A. It's a handgun.

13 Q. And there are two of those?

14 A. Yes, there is.

15 Q. What is the difference between a revolver and a pistol?

16 A. Well, a revolver is a gun that needs to be loaded bullet by  
17 bullet in a cylinder, and then you would close the cylinder and  
18 you would be able to fire that gun.

19 An automatic, or a 9 millimeter, has what is called a  
20 clip, it holds anywhere from six up, and you actually have to  
21 push the bullets into the clip. And once you get them filled,  
22 you would slide that clip up into the bottom of the gun and be  
23 able to fire as many rounds as you can put in that clip; they  
24 all carry different amounts.

25 Q. What is the difference between a revolver and a pistol with

J3C8AC04

McAllister - Direct

1 respect to when the weapon is fired? What happens to the shell  
2 casing?

3 A. The shell casing stays within the revolver. And in the 9  
4 millimeter, the shell gets expended out of the gun and it drops  
5 to the floor or wherever you're standing.

6 Q. So in a revolver, the shell casing stays in the weapon,  
7 correct?

8 A. That is correct. It has got to be manually ejected out of  
9 the gun.

10 Q. So item 1 is two of those revolvers.

11 What is item 2?

12 A. Item 2 is one Beretta, 9 millimeter, model 92FS, with a  
13 clip and a case.

14 Q. That 9 millimeter, that's a pistol, that's different than a  
15 revolver, correct?

16 A. That is correct.

17 (Continued on next page)

J3C6AC05

McAllister - direct

1 BY MR. KROUSE:

2 Q. What is Item No. 3?

3 A. Item 3 is two H & K, which is short Heckler & Koch 40  
4 caliber Smith & Wesson with clips and cases.

5 Q. It is two of those?

6 A. That's correct.

7 Q. Is that a pistol or a revolver, the Heckler & Koch 40  
8 caliber?

9 A. That's a -- almost -- it's the same as the 9-millimeter.  
10 It is -- it uses a clip. It is not a revolver.

11 Q. So there are two of those?

12 A. That is correct.

13 Q. What is Item No. 4?

14 A. Item 4 is a 50 9-millimeter Luger rounds in a box.

15 Q. By "rounds," what does that refer to?

16 A. That would be bullets that you would need to use to load  
17 the 9-millimeter handguns or 40 caliber handgun.

18 Q. Is 9-millimeter a type of caliber?

19 A. That's correct.

20 Q. What is Item No. 5?

21 A. One empty Beretta box with a clip.

22 Q. What is a clip?

23 A. A clip is an ammo clip that holds the bullets that you  
24 slide into the bottom of the gun so it can fire rounds.

25 Q. What is Item No. 6?

J3C6AC05

McAllister - direct

1 A. Item 6 is a black crossbow with an arrow.

2 Q. What is a crossbow?

3 A. It's a -- it's like -- almost like a pistol with a string  
4 on it and you pull back and you load an arrow into it or what  
5 you call a dart. And when you release the trigger, the arrow  
6 should go forward.

7 Q. So it is a type of weapon with an arrow; is that accurate?

8 A. Pretty much.

9 Q. What is Item No. 7?

10 A. Item 7 quantity 10 40 caliber rounds.

11 Q. Rounds here refers to bullets; correct?

12 A. That is correct.

13 Q. That is 10 in that item; correct?

14 A. That is correct.

15 Q. Where were all of these weapons and bullets recovered from  
16 in that apartment?

17 A. They where are recovered in the floor trap in the weight  
18 room at 502 West 149 Street, Apartment 3A7.

19 Q. The same place with the cocaine and the currency; correct?

20 A. That is correct.

21 Q. Moving to page 5 of the vouchers, 3525-03, page 5.

22 What is the voucher number of this document?

23 A. F456418.

24 Q. What is it -- does this document reflect was seized by you?

25 A. It was the crossbow and dart. It appeared to be -- it was

J3C6AC05

McAllister - direct

1 on the 5th -- May 5th of 1994 taken from the other voucher and  
2 put in a separate voucher.

3 Q. Does it say on this voucher that it was previously  
4 vouchered?

5 A. Yes, it does.

6 Q. Why was the crossbow and the dart in particular moved to  
7 its own separate voucher?

8 A. Because the crossbow and dart would not be going to the  
9 ballistic unit to be tested because it is not fired by  
10 gunpowder or it doesn't leave any markings on an arrow. So it  
11 had to be sent separately -- vouchered separately.

12 Q. And then the other items, firearms and bullets, those were  
13 all sent where?

14 A. To the firearms unit -- ballistic unit to be tested.

15 Q. After this search warrant was executed was a picture taken  
16 with you and the members of the team and the evidence that was  
17 recovered?

18 A. Yes, there was.

19 MR. KROUSE: Ms. Fetman, can you put on the screen for  
20 everyone Government Exhibit 800.

21 Q. Do you recognize this photograph?

22 A. Yes, I do.

23 Q. What is it?

24 A. It's a photo of the team that worked at Manhattan  
25 narcotics.

J3C6AC05

McAllister - direct

1 Q. Are you in the photograph?

2 A. Yes, I am.

3 Q. Where are you?

4 A. Top row far right.

5 Q. Wearing the chain?

6 A. That's me.

7 Q. What is depicted on the table in front of all these  
8 individuals?

9 A. The seizure that day after all the search warrants were  
10 completed.

11 Q. You testified about the seizure of several guns, cash,  
12 cocaine.

13 Is that all reflected in this photograph?

14 A. Yes, it is.

15 Q. You testified about the seizure of the triple beam Ohaus  
16 scale?

17 A. Yes.

18 Q. Is that reflected on the table?

19 A. There is one there on the table, yes.

20 Q. Where is it?

21 A. Bottom right.

22 Q. It may be difficult to see, but do you see a crossbow here?

23 A. Yes. It's in front of -- almost in front of Detective  
24 Callahan. You can see the string. It is just to the left of  
25 the last Ohaus triple beam scale.

J3C6AC05

McAllister - cross - Mr. Miedel

1 Q. The black item?

2 A. That's it there, yes.

3 Q. The one that has the red circle around it?

4 A. That's correct.

5 Q. That is the crossbow that you seized and put into evidence;  
6 correct?

7 A. That is correct.

8 MR. KROUSE: No further questions.

9 THE COURT: All right. Any cross-examination?

10 MR. KOFFSKY: Nothing from Mr. Acosta, your Honor.

11 THE COURT: Mr. Diaz?

12 MR. MIEDEL: Yes.

13 CROSS-EXAMINATION

14 BY MR. MIEDEL:

15 Q. Hello, sir.

16 A. How are you?

17 Q. Are you aware of the names of any of the subjects that  
18 were -- any of the names of the people that were subjects of  
19 this search warrant?

20 A. No.

21 MR. MIEDEL: Nothing further.

22 THE COURT: Any redirect?

23 MR. KROUSE: No, your Honor. Thank you.

24 THE COURT: Okay. You may step down. Thank you.

25 THE WITNESS: Thank you, your Honor.

J3C6AC05

McAllister - cross - Mr. Miedel

1 (Witness excused)

2 THE COURT: Call your next witness.

3 MR. KROUSE: Your Honor, the government would like to  
4 read two stipulations between the parties.

5 THE COURT: Are these testimonial or as to facts?

6 MR. KROUSE: Testimonial, your Honor.

7 THE COURT: Ladies and gentlemen, a stipulation as to  
8 testimony is an agreement by the parties that if called as a  
9 witness, the witness would testify in a certain manner or would  
10 say thus and so in their testimony. You are required to accept  
11 that if called the witness would so testify. The weight and  
12 significance that you give to the testimony is entirely up to  
13 you to decide. Stipulations save the time of the parties, the  
14 Court, the jury in presenting live witnesses.

15 You may proceed.

16 MR. KROUSE: Thank you, your Honor.

17 It is hereby stipulated between the parties that if  
18 called to testify as a witness, Lieutenant Michael Zanelone of  
19 the New York City Police Department NYPD Property Clerk  
20 Division would testify that he has direct knowledge of NYPD's  
21 property retention policies and practices and that:

22 1. The property listed on NYPD Property Clerk's  
23 Invoice F456366, consisting of \$155 in United States currency  
24 recovered by NYPD Police Officer Santos Rivera from James E.  
25 Warren after his arrest in the vicinity of West 149th Street



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McAllister - cross - Mr. Miedel

1 and Amsterdam Avenue, New York, New York, on or about  
2 April 29th, 1994, was deposited into an account in the name of  
3 the NYPD Pension Fund consistent with NYPD policy on or about  
4 August 7th, 1996.

5 2. Property listed on NYPD property clerk's invoice  
6 F456408, consisting of \$9,950 in United States currency  
7 recovered by NYPD Police Officer Michael Callahan during the  
8 execution of search warrants at 500 West 149th Street, New  
9 York, New York, on or about May 4th, 1994, was deposited in an  
10 account in the name of the NYPD Pension Fund pursuant to NYPD  
11 policy on or about March 4th, 1997.

12 3. Property listed on NYPD Property Clerk's Invoice  
13 F456412, consisting \$6,000 in United States currency recovered  
14 by NYPD Police Officer Patrick McAllister during the execution  
15 of the search warrant on or about May 4th, 1994, was deposited  
16 in an account in the name of the NYPD Pension Fund pursuant to  
17 NYPD policy on or about April 15th, 1996.

18 Property listed on NYPD property -- sorry.

19 4. Property listed on NYPD Property Clerk's Invoice  
20 F456413 consisting of: (1) notepads miscellaneous papers with  
21 drug records; (2) an Ohaus triple beam scale; (3) a Motorola  
22 cell phone with a battery and adaptor; and (4) a linear trap  
23 opener, recovered by NYPD Police Officer Patrick McAllister  
24 during the execution of a search warrant on or about May 4th,  
25 1994, was destroyed pursuant to the NYPD policy on or about

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McAllister - cross - Mr. Miedel

1 June 30th, 1995.

2 5. Property listed on NYPD Property Clerk's Invoice  
3 F456415 consisting of: (1) two Charco 38 caliber special  
4 revolvers, Serial Nos. 1115065 and 115220; (2) one Beretta  
5 9-millimeter revolver, Model 92FS, Serial No. BER307174Z with a  
6 clip and a case; (3) two 40 caliber Smith & Wesson guns with  
7 clip and cases, Serial Nos. 22-1085 and 22-10187; (4)  
8 59-millimeter Luger bullets in a box; (5) one empty Beretta box  
9 with a clip; (6) one black crossbow with an arrow; and (7) 10  
10 40 caliber bullets recovered by NYPD Police Officer Patrick  
11 McAllister during the execution of a search warrant on or about  
12 May 4th, 1994, was destroyed pursuant to NYPD policy on or  
13 about May 23, 2002.

14 6. Property listed on NYPD Property Clerk's Office  
15 F45641, consisting of (1) crossbow; and (2) one dart, recovered  
16 by NYPD Police Officer Patrick McAllister during the execution  
17 of a search warrant on or about May 4th, 1994, was destroyed  
18 pursuant to NYPD policy on or about March 1, 1996.

19 The government offers Government Exhibit 1000-S.

20 THE COURT: Any objection?

21 MR. WEINSTEIN: No.

22 MS. MARCUS: No objection.

23 THE COURT: Is that in fact the stipulation between  
24 the parties?

25 MR. WEINSTEIN: Yes.

J3C6AC05

McAllister - cross - Mr. Miedel

1 MS. MARCUS: Yes.

2 THE COURT: Thank you.

3 (Government's Exhibit 1000-S received in evidence)

4 MR. KROUSE: One more stipulation, your Honor.

5 The parties hereby stipulate if called to testify as a  
6 witness, Evidence Property Control Specialist Samuel Williams  
7 of the New York Police Department ("NYPD") Property Clerk  
8 Division, would testify that Detective Carlos Vasquez of the  
9 NYPD requested him to conduct a diligent search for the  
10 following property which he was unable to locate:

11 (1) Property listed on NYPD Property Clerk's Invoice  
12 F456417 consisting of one white Motorola beeper, Serial No.  
13 0049863 bearing the initials "SR"; and (2) a black E5  
14 communications beeper, Serial No. NYSE0184436WV, bearing the  
15 initials "SR" recovered by NYPD Police Officer Santos Rivera  
16 after the arrest of Robert A. Mojico Isaac, a/k/a Robert  
17 Acosta, on or about May 4th, 1994.

18 2. If called to testify as a witness, Evidence  
19 Property Control Specialist Charmian Carryl of the NYPD  
20 Property Clerk Division would testify that the Detective Carlos  
21 Vasquez of the NYPD requested her to conduct a diligent search  
22 for the following property which he was unable to locate:

23 (A) Property listed on NYPD Property Clerk's Invoice  
24 F45 --

25 THE COURT: Slower.

J3C6AC05

McAllister - cross - Mr. Miedel

1 MR. KROUSE: Yes, your Honor.

2 F456367, consisting of: (1) two clear plastic bags  
3 containing alleged crack cocaine or powder cocaine bearing the  
4 initials "SR"; and (2) two brown paper backs bearing the  
5 initials "SR" recovered everyday by NYPD Police Officer Santos  
6 Rivera in the vicinity of West 149th Street Amsterdam Avenue,  
7 New York, New York, on or about April 29th, 1994; and

8 (B) Property listed on NYPD Property Clerk's Invoice  
9 F456405, consisting of: (1) Luger Model 10/22 carbine 22  
10 caliber gun, bearing the initials "JG"; (2) a Ram Line  
11 ammunition clip bearing the initials "JG"; (3) 48 rounds of a  
12 22 caliber ammunition; (4) four rounds of 30 carbine  
13 ammunition; and (5) one round of 9-millimeter ammunition  
14 recovered by NYPD Police Officer John Galasso from 500 West  
15 149th Street, Apartment 2 E, New York, New York, on or about  
16 May 4th, 1994.

17 (C) Property listed on NYPD Property Clerk's Invoice  
18 F456411, consisting of an unspecified quantity of alleged  
19 cocaine recovered by NYPD Police Officer Patrick McAllister  
20 during the execution of a search warrant on or about May 4th,  
21 1994.

22 The government offers Government Exhibit 1001-S.

23 THE COURT: Any objection?

24 MR. WEINSTEIN: No.

25 THE COURT: Is that in fact the stipulation of the

J3C6AC05

Stephenson - direct

1 parties?

2 MR. WEINSTEIN: Yes.

3 MS. MARCUS: Yes.

4 THE COURT: Received.

5 (Government's Exhibit 1001-S received in evidence)

6 MR. KROUSE: Your Honor, the government calls Ronald  
7 Stephenson.

8 THE DEPUTY CLERK: Raise your right hand.

9 RONALD STEPHENSON,

10 called as a witness by the Government,

11 having been duly sworn, testified as follows:

12 THE DEPUTY CLERK: State your name and spell and spell  
13 it for the record.

14 THE WITNESS: My name is Ronald Stephenson.  
15 R-o-n-a-l-d. S-t-e-p-h-e-n-s-o-n.

16 THE COURT: You may inquire.

17 DIRECT EXAMINATION

18 BY MR. CHIUCHIOLO:

19 Q. Good afternoon, Mr. Stephenson.

20 A. Good afternoon.

21 Q. Are you currently employed?

22 A. Yes, part-time.

23 Q. What do you do?

24 A. Martial arts instructor presently.

25 Q. Did you ever work for the New York City Police Department?

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Stephenson - direct

1 A. Yes.

2 Q. What years did you work for the NYPD?

3 A. 1984 to 2004.

4 Q. Did you retire from the NYPD in 2004?

5 A. Yes, I did.

6 Q. What was your title upon retiring from the NYPD?

7 A. Sergeant.

8 Q. I would like to focus you on September of 1994.

9 At that time what unit within the NYPD were you  
10 assigned to?

11 A. I was assigned to Manhattan south strategic narcotics and  
12 guns unit.

13 Q. How long were you with the narcotics and guns unit?

14 A. Approximately five years.

15 Q. In September of '94 were you involved in an investigation  
16 of a drug organization located in the vicinity of 149th Street  
17 and Amsterdam Avenue?

18 A. Yes, I was.

19 Q. Were you working with other members of the NYPD as a team  
20 on that investigation?

21 A. Yes, I was.

22 Q. I want to focus you on the date of September 22nd, 1994.

23 Were you working on that date as part of this  
24 investigation?

25 A. Yes, I was.

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Stephenson - direct

1 Q. With the understanding that this was a long time ago, do  
2 you remember some of the details of what happened on that day?

3 A. Yes, I do. I remember some of the details.

4 Q. Do you remember all of the details of what happened that  
5 day?

6 A. No. Not all the details.

7 Q. What were you doing on September 22nd, 1994, regarding the  
8 investigation of the drug organization in the vicinity of 149th  
9 Street and Amsterdam Avenue?

10 A. I was executing a search warrant.

11 Q. Do you remember where you were executing the search  
12 warrant?

13 A. 500 West 149th Street. Apartment 3D, as in David.

14 Q. Were you alone or were you with someone else that day?

15 A. I was with my field team and I was with one of my partners.

16 Q. Mr. Stephenson, what was your role in the execution of the  
17 search warrant?

18 A. I was the arresting officer and I was also the walk-on  
19 officer with my partner.

20 Q. What was the first thing you did that day as part of your  
21 execution of the search warrant when you got to the building?

22 A. Excuse me?

23 Q. When you got to the building that day, what was your role  
24 in executing the search warrant?

25 A. Our role was to sit outside Apartment 3D to see if anyone

J3C6AC05

Stephenson - direct

1 is going to run out.

2 Q. What did you hear when you got to the front door of the  
3 Apartment 3D?

4 A. I heard a buzzer go off and inside people I heard people  
5 yelling, "Police here. Police here."

6 Q. What after you heard the buzzing noise and the yelling  
7 inside or the noise inside the Apartment 3D?

8 A. Gentleman came running out right to us.

9 Q. What happened to the person who ran out of the apartment?

10 A. We placed him under arrest.

11 Q. So I am going to ask you questions about the arrest later,  
12 but first I would like to to ask you some questions about what  
13 you observed inside the Apartment 3D.

14 Did you eventually enter the apartment to execute the  
15 search warrant?

16 A. Yes, I did.

17 Q. What did you observe when you entered the apartment?

18 A. I don't quite totally recall everything.

19 Q. Well, do you recall once you were inside the apartment, did  
20 you seize any property inside the apartment?

21 A. Yes, we did.

22 Q. Do you recall every item that you seized that day?

23 A. Not every item, no.

24 Q. Is there something that would help refresh your  
25 recollection as to the property you seized from inside the



J3C6AC05

Stephenson - direct

1 apartment that day?

2 A. Yes.

3 Q. What would help refresh your recollection?

4 A. Property vouchers.

5 Q. I am going to hand you a stack of documents which were  
6 premarked for identification purposes as 3531-09. I am going  
7 to hand you 11 of 22.

8 THE COURT: I am going to explain to you what it means  
9 to refresh your recollection. You look at the document and it  
10 looks authentic to you and there are two possibilities. You  
11 read it and it doesn't refresh your recollection. It looks  
12 like it is probably a good looking document to you or something  
13 you've seen before or maybe even something that you signed, but  
14 it doesn't refresh your recollection.

15 If it refreshes your recollection, you should be able  
16 to turn it over face down and testify from memory. Because now  
17 it jogged your recollection. Maybe it was the date of your  
18 nephew's birthday. Maybe it is something unusual there. That  
19 is a what a refreshed recollection is.

20 So the question now is you are supposed to look at  
21 this and the first question is whether it refreshes your  
22 recollection on the question that you were asked about. And if  
23 it does, you will say yes. And if it doesn't, you will say no  
24 and we'll take it from there.

25 Okay?

J3C6AC05

Stephenson - direct

1 THE WITNESS: Okay.

2 Q. I am going to ask you to review those documents and put  
3 them aside once you are done.

4 A. Okay.

5 Q. You can put those documents aside.

6 Mr. Stephenson, having reviewed those documents, does  
7 it refresh your recollection as to what you seized while  
8 executing the search warrant on September 22nd, 1994, or do you  
9 need to read the items listed on the vouchers in order to  
10 convey the information accurately to the jury?

11 A. I would have to read the items to convey them accurately.

12 Q. Are those your property vouchers?

13 A. Yes. They have my signature on it.

14 Q. Did you sign each of those property vouchers?

15 A. Yes.

16 Q. Let me ask you a few questions. Can you please tell the  
17 jury what is in evidence property voucher and why you prepared  
18 them?

19 A. Evidence property vouchering contain evidence for a case.  
20 It is also to prepare for safekeeping and chain of custody.

21 Q. Approximately how many property vouchers did you fill out  
22 during your years at the NYPD?

23 A. Approximately maybe a thousand.

24 Q. Do you believe that you prepared the property vouchers in  
25 front of you close in time when the search warrant was

J3C6AC05

Stephenson - direct

1 executed?

2 A. Yes.

3 Q. During your career with the NYPD, was it important that you  
4 prepared your vouchers accurately?

5 A. Yes.

6 Q. Was it your practice to be accurate when filling out NYPD  
7 property vouchers?

8 A. Yes.

9 Q. Do you believe you filled out those vouchers accurately?

10 A. Yes, I believe so.

11 MR. CHIUCHIOLO: Your Honor, the government requests  
12 that Mr. Stephenson can read from his vouchers as his past  
13 recollection recorded.

14 MR. KOFFSKY: No objection.

15 THE COURT: Proceed.

16 BY MR. CHIUCHIOLO:

17 Q. So, Mr. Stephenson, if you could pull up in front of you  
18 Voucher F645427, which is 522. I am going to hand you what has  
19 been premarked for identification purposes as Government  
20 Exhibit 812.

21 Mr. Stephenson, focusing on what has been marked for  
22 identification as Government Exhibit 812, do you recognize it?

23 A. Yes.

24 Q. Does the number on the bag that contains Government Exhibit  
25 812 match the property voucher that is in page 5 of 3531-09?

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Stephenson - direct

1 A. Yes, it does.

2 Q. Is your signature on this property voucher?

3 A. Yes. That's my signature on the voucher, yes.

4 Q. Does the description of the property listed on that voucher  
5 appear to be the description of what is marked as Government  
6 Exhibit 812?

7 A. Yes. It's a notebook, yes.

8 MR. CHIUCHIOLO: Government offers Government  
9 Exhibit 812.

10 THE COURT: Any objection?

11 MR. KOFFSKY: No objection.

12 THE COURT: It is received.

13 (Government's Exhibit 812 received in evidence)

14 BY MR. CHIUCHIOLO:

15 Q. Can you take the item, Mr. Stephenson, that is now received  
16 in evidence, Government Exhibit 812, out of the bag?

17 THE COURT: Ladies and gentlemen, I am going to hold  
18 you in suspense. You will have to come back tomorrow to see  
19 what is in bag. So I feel like I have known you for months,  
20 maybe years, but it has only been a day, two days. This is the  
21 second day. So I appreciate the smiles. I appreciate your  
22 remaining in good spirits. Please go home and relax. Put the  
23 case out of your mind. Remember, do not discuss the case among  
24 yourselves or with anyone, including family and friends. You  
25 don't do any text willing or blogging and you don't do any

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Stephenson - direct

1 research on your own.

2 We'll be back in action for a 10:00 start. In order  
3 to be back in action for a 10:00 start, you really need to be  
4 in the jury room 10 to 10:00. Thank you very much and I will  
5 see you tomorrow morning.

6 (Jury excused)

7 (In open court; jury not present)

8 THE COURT: See you all tomorrow morning.

9 Have a pleasant evening.

10 (Adjourned to March 13, 2019, at 10:00 a.m.)  
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